NOTES ON KHASI LAW

BY

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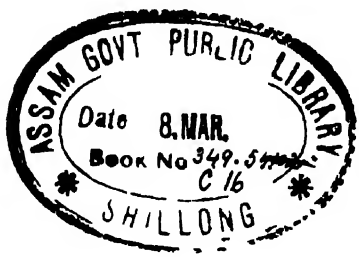

Printed by
HENRY MUNRO LTD
Aberdeen Scotland

PREFACE

THIS book was commenced at the suggestion of an Assamese lawyer who mentioned the great difficulty experienced by the Bar, especially by its non-Khasi members, in obtaining information on Khasi law and custom. Colonel Gurdon's monumental work, "The Khasis," contains a full record of their public and private life, but its aim was not the solution of legal problems. Many judgments of Khasi magistrates exist in the record rooms, but they are brief and practical. A knowledge of the principles of the law is necessary before they can be understood. Leading cases in the Court of the Deputy Commissioners have been few and the materials before the Court have not always been sufficiently complete for adequate exposition of the law in the judgments. The Courts have always very properly striven to effect settlements of disputes within the family or clan according to what the leading members consider just in the special circumstances of the case. Respect for parents and elders, good sense and religious toleration have enabled Khasi families to settle most of their disputes and to adapt old customs to the changes in society brought about by Christianity and modern commerce. A book that tries to substitute for flexible custom a system of rigid law may do far more harm than good. But as increasing recourse is had nowadays to the Courts, important decisions are inevitable in the future, which will be quoted as precedents by a now numerous Bar. There being no guide, the only method possible was to invent problems, find how each would be decided, and then to build a connected theory on these decisions.

This proved to be exceedingly difficult and the chapters have had to be rewritten many times. Although technical legal terms have been deliberately avoided and the whole made to present an appearance of the greatest possible simplicity, it would be erroneous to suppose that there can be an easy guide to the correct decision of cases. Some problems, especially those connected with the changes brought about by modern life, have been omitted from discussion as any answer is too speculative.

My warmest thanks are due to Mr. David Roy of the Assam Civil Service, without whose constant criticism and aid the book could not

have appeared. He has contributed some Chapters and all of the first part of the book has been argued and re-argued with him for many months.

Rai Bahadur Dohory Ropmay, of the Assam Civil Service, retired, an officer who has had the greatest experience of the law, has been kind enough to read the book and to suggest some changes in Part I. He has given his weighty opinion that the exposition is sufficiently accurate for publication. I am indebted to Rai Saheb Hormurai Diengdoh of the Shillong Bar for advice and to an article in Ka Juk on Marriage, and to Mr. Nalle of the Shillong Bar for an article on inheritance in the *Times of Assam*.

Mr. Josingh Rynjah of the Assam Civil Service has contributed an important note. To Mr. Wiscott of the Assam Civil Service Junior, I am indebted for consultations about the Jowai land system.

U Jugidhon Roy, Wahadadar of Shella, has contributed the portion on Shella custom. His answers are very definite; it is presumed that they are correct as he is the highest authority on that custom.

The judgments and reports of Mr. Dentith, I C.S., Deputy Commissioner, have been frequently quoted; all students of Khasi law must be indebted to him for his learned and elaborate treatment of problems.

Part II contains the land system. There is much in the Chapter on the Jaintia Hills which concerns land revenue rather than land law, but, in the peculiar circumstances there existent, separation is difficult.

Part III deals with the States, but its object is limited to some problems which are now causing administrative difficulties. The discussions of territorial sovereignty, judicial jurisdiction and citizenship, and the history of the Sanads, are intended only to explain the origin of these special problems. Internal administration of the States is not touched upon save in so far as there is a connection with these particular points.

The final Chapter on Federation was added only after much hesitation and for the reason that avoidance of the most important problem of all was undesirable in a book whose object is to aid the Khasi people in the understanding of the problems, legal and constitutional, which confront them.

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PART I.

CHAPTER I.

INHERITANCE AMONG KHASIS AND SYNTENGS, EXCLUDING WARS.

THE Society is matriarchal. Descent is reckoned from the mother alone. The children belong to the clan of the mother, not to that of the father.

A description of the succession to the iing-khadduh (the house of the youngest female) is the best introduction to the system of inheritance, because the succession can be described apart from divisions of property, succession by a male in special circumstances and other complications.

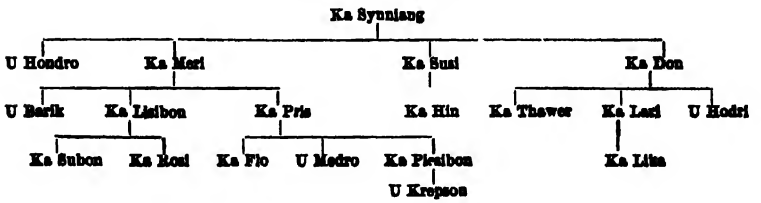
SUCCESSION TO THE IING-KHADDUH.

Succession to the iing-khadduh is in the following order:—

1. Mother's youngest daughter.
2. Youngest daughter's youngest daughter however low soever.
3. On failure of the youngest daughter's stock, the next youngest daughter of the mother.
4. Her youngest daughter however low soever.
5. Failing all daughters and their female stocks, the iing-khadduh would be absorbed in the iing-khadduh of the mother's family.

The system is explainable most easily by a table.

(U is the masculine, Ka the feminine article.)



(a) Ka Don is ka khadduh (the youngest) and keeps the iing-khadduh or family house on the death of Ka Synniang. On her death, Ka Lari, then Ka Lika and then Ka Thawer succeed.

(b) If all the female stock of Ka Don die, Ka Susi would take and after her Ka Hin.

(c) Then Ka Meri, Ka Pris, Ka Plesibon, Ka Flo, Ka Lisibon, Ka Rosi and Ka Subon in the order as named.

(d) Failing them the iing-khadduh of the mother Ka Synniang's family would absorb the iing-khadduh of Ka Synniang's branch.

FORMATION OF NEW IING-KHADDUH BY THE STOCKS OF THE DAUGHTERS.

In the table above, on the death of Ka Susi, Ka Hin would cremate her and keep her house and perform ceremonies in her memory; on the death of Ka Meri, Ka Pris would do likewise and be the iing-khadduh of the line of Ka Meri; so Ka Rosi for Ka Lisibon. If the female descendants of any stock die out (and there is no choosing of a female heir, rap-iing, to be described below) the ceremonies are performed by ka khadduh of the whole family, in this case Ka Don or ka khadduh of the line of Ka Don.

The placing of the bones under the stone (mawbah) of the whole family or clan, an important and expensive ceremony, is done by ka khadduh of the whole family. She is the keeper of the iing-seng (family house) of the whole family or clan. The children of the deceased contribute, if able, but ka khadduh of the family is responsible for the ceremony and its expenses and this is one reason why she gets a larger share of property. The nature of the ownership by ka khadduh will be described in a separate chapter.

CHAPTER II.

INHERITANCE OF ANCESTRAL PROPERTY AMONG KHASIS EXCLUDING SYNTENGS AND WARS.

The order of succession is the same as for the iing-khadduh, but males may inherit in some circumstances.

A. If family property remains undivided the succession by females is exactly as in the order of the iing-khadduh of the family.

B. If the family property be divided among the daughters, succession to property is the same as to the iing-khadduh of each stock.

Example:—In the table, Ka Don and her stock (Kpoh) would be ka khadduh of the whole family but Ka Synniang might give separate shares, usually on their marriage, to Ka Meri and Ka Susi. The successor to Ka Meri's entire separate property would be Ka Pris and to the entire property of Ka Pris the successor would be Ka Plesibon. Failing her, Ka Flo and failing Ka Flo, Ka Lisibon and then Ka Rosi. But Ka Meri might in turn divide her property between Ka Lisibon and Ka Pris, then Ka Rosi and failing her Ka Subon would succeed to Ka Lisibon, Ka Plesibon and failing her Ka Flo would succeed to Ka Pris. On failure of all the female stock of Ka Meri who had taken a separated share, a male of her stock could take her share But he holds for his lifetime only. If there be no male and no female of her stock, inheritance passes to Ka Don and her stock.

DIVISION OF PROPERTY AND ITS CONSEQUENCES.

Division of property is more frequent than continuance in joint possession. A large area may be held by a clan, but it is divided into separate portions held by families. These portions are again sub-divided into holdings of stocks within the family. The mother divides her land among her daughters, usually on their marriage, reserving a larger share for ka khadduh. The older daughters hold these shares as property entirely separated from those of the rest of the family and without any control by ka khadduh. Each can sell her portion without reference to ka khadduh.

There is no obligation upon the mother to divide her property in equal shares among her daughters. (The Wars of the Shella Confederacy and neighbouring villages furnish an exception to this rule; their customs will be described separately.)

Ka khadduh, who is given the largest share on account of religious and family duties, takes as custodian.

Sometimes a separate share is given to all daughters including ka khadduh but a piece of land is given in addition to ka khadduh for the expenses of her special duties. Ka khadduh has the rights of

other daughters with separated shares in respect of her share, but the additional land given for the family religion is family property of which she is custodian. She cannot sell save with the consent of the family.

There is no right to demand partition of family property.

WHEN PROPERTY IS NOT DIVIDED.

(1) It may be too small, in which case the youngest daughter takes all. Succession is the same as detailed above.

(2) The mother may not wish to divide.

The resulting position of the family varies according to the degree of separation of property. The house and house gardens (ki kper) are always held separately. The terraced rice fields (pynthor) are held sometimes separately and sometimes together. Fields permanently cultivated (ki kper—i.e., permanently cultivated and manured land for crops other than wet rice) would generally be held separately. Land for shifting cultivation would usually be held in common but areas might be set apart for each branch or stock of the family.

Succession in each stock of the family is the same as if the property had been divided, but the succession is only to a right of occupancy and not to separate property.

If any member of the family wishes to dispose of her share, she is bound to offer first to the other branches of the family, and only on refusal of these branches to purchase can she dispose of her rights; even then she cannot sell outright (except by special permission of the family) but can only lease out the right of occupancy. The lease may even be a perpetual one, in which case a premium can be secured by her; but any lease must be with the consent of ka khadduh and the managers acting for ka khadduh. The managers are leading male members of the family. The difficulty of keeping family and clan land undivided becomes great when nearness to a town makes it of value for sale or lease. This difficulty in management will be discussed in Chapter IV.

INHERITANCE BY A MALE.

1. If the members of the family all die with the exception of a male, the male takes.

2. If the property has been divided and the females of a stock holding a separate share all die, a surviving male takes.

Example (a) In the table if the property has been divided among the daughters, Ka Meri, Ka Susi and Ka Don, and if the entire stock of Ka Meri die except U Krepson, then he takes the share of Ka Meri.

Example (b) If Ka Plesibon has a share divided from Ka Flo, U Krepson takes this share on the death of Ka Plesibon. If the property of Ka Pris had not been so divided, Ka Flo would take before U Krepson.

PREFERENCE AMONG MALES.

The brother takes before the son.

Example. In the table suppose the property of Ka Pris be undivided and Ka Plesibon and Ka Flo die, then U Medro takes in preference to U Krepson.

NATURE OF INHERITANCE BY THE MALE.

Inheritance by the male is subject to the following restrictions:—

1. He holds for life only: his children do not inherit as they belong to the clan of their mother not to the clan of their father.
2. A male can take a female kur (blood relative connected through females) as the keeper of the property during his lifetime and as the successor to the property on his death. She need not be and usually is not ka khadduh. If he does not do so, ka khadduh is his successor at his death.
3. If he be a minor, a member of the family, selected by the body of kurs, must be guardian of the property.
4. He must keep the property intact. If it be land, he has no power to sell; if it be ornaments, he must keep for his kurs and not give to his own wife and children.
5. The profits of his labours in the landed property can be used for his wife and children.

CHOOSING OF A FEMALE HEIR, RAP-IING.

(a) If a female has a separate share but has no daughters, she can choose a female of the family or clan as heir to herself and as keeper of her house after death.

(b) If the ancestral property has devolved upon a male in circumstances described above, the male may choose a female of the family to take care of the family house, to perform the family worship and to be his heir after death.

The female is called the nong-rap-iing, the helper of the house.

The choice usually falls not upon a female who is already ka khadduh of a stock of the family but upon a female who is not the keeper or likely to be the keeper of an iing-khadduh. The female may be the eldest living female in point of age of the family or can be an elder sister who is not keeper of an iing-khadduh because there is a younger sister. On the death of the nong-rap-iing, her successor as nong-rap-iing is the female who would ordinarily succeed to her property.

Example (1) In the table, suppose Ka Lisibon to have got a separate share. Ka Rosi dies and Ka Subon takes. Ka Subon having no children may choose, for example, Ka Susi or Ka Hin or Ka Thawer as her heir. Ka Thawer is a very likely choice if Ka Lari and Ka Lika are living, as they would be keepers of their own iing-khadduh.

Example (2) Suppose U Kropson to have inherited the separated share of Ka Plesibon. He may choose Ka Flo, if living, or else he would probably choose Ka Subon or Ka Thawer.

CHAPTER III.

INHERITANCE TO SELF ACQUIRED PROPERTY AMONG KHASIS (EXCLUDING SYNTENGS).

I.—PROPERTY OF A FEMALE.

A.—PROPERTY ACQUIRED BEFORE MARRIAGE, NONGKHYNRAW.

A FEMALE before marriage nearly always resides in the house of her mother or female kurs. Her earnings are considered as part of the family earnings. If she dies, leaving any property which can be distinguished as separate (this might happen if she had left her home to work elsewhere) her mother, or failing the mother, the nearest female kur takes.

This taking does not change the nature of the property from self acquired to ancestral, as it is not a passing of property by descent. The order of succession is the same as for ancestral property.

B.—SELF ACQUIRED PROPERTY OF A FEMALE AFTER MARRIAGE.

A woman after marriage may acquire property by her own efforts. On her death, succession to it is the same as for a divided share of ancestral property. If the children are minors, a kur is the guardian of their property. Especially among persons who live by cultivation, wife and husband work together. The only problem that may arise is about the share of the husband in certain cases to be discussed below; otherwise these joint earnings descend as if they were the wife's earnings.

When a wife dies before her husband and leaves children and the husband remains in the house of his dead wife, the children have no power to take all this jointly earned property and to drive away the father. The earnings were as much his as hers.

II.—SELF ACQUIRED PROPERTY OF A MALE.

NOTE BY MR. DAVID ROY, E.A.C.

For the understanding of this difficult matter, on which there exist few decisions by the Courts, some being of questionable authority, and about which Khasi opinion is not sufficiently definite to provide a fixed guide, a description of the position of the male according to Khasi ideas is necessary.

Although the custom of the Syntengs (ki Pnar) differs, in that by old custom the Synteng husband does not go to live in his wife's house but remains with his mother or kurs, yet the underlying ideas are the same.

The son belongs to the mother and the mother to her mother, back to the common ancestress of the clan (Ka Iawbei). The mother and sisters of the male bring him up from childhood to manhood. He works in the family for his mother and his sisters. He has no earnings apart from them. He is the son of that family " u khun lajong " (their own son) and is " u khun ki briew " (some one else's son) in regard to other families.

When he marries and lives with his wife, though the mother claims the body of the son as hers, yet he becomes, through marriage, the son, as it were of a new family, and he becomes the father of children through his wife. The family of his own mother look upon the son as one who has gone to someone else's house (uba la leit sha iing ki briew), but he retains his position in his own family as member of his clan (jaid) as uncle (u kni) of his sister's children and adviser to them and to his kurs when he becomes older. At death he is reclaimed by them; his body is taken and burned by the wife and his children, the ashes (bones) are sent to his family. Should he die at a distant place from where bones cannot be brought the ceremony is performed with cowries to represent the bones.

The bond of connection between man and wife is their children and she is the link between him and his children. The wife is connected with the man and his family through her children rather than simply as wife of the man. When there are no children, there is a good ground for divorce.

This does not mean that marriage is looked upon as a light tie, to be broken for trivial causes; indeed a good couple would not separate even for lack of children. It means that the end of marriage is regarded as the begetting of children and only when there are children is the married state complete.

In the house of his mother, a man is the son of the family; in the house of his wife and children, he is in a manner the son of the family of his wife. In the house of his kurs, he, when of mature age, takes the position of an uncle (u kni); in the house of his wife and children, he has the honoured position of the father.

As an uncle he is " uba ha ka iap ka im " (he who is present in matters of life and death); as a father he is " uba lah uba iai " (he who bears the burden and heat of the day).

On the death of the man, the children must return to his kurs not only his body but also his full dress and ornaments and something of his earnings.

Among the Syntengs, if a wife wishes to keep any of the property of her husband she must make a solemn promise to remain unmarried. If she breaks this, she must return all the property. The Khasis take the middle course of returning or giving along with the bones of the man as much as they can and ought to return. The kurs of the man ought never to demand more than the children can pay without inconvenience.

Colonel Gurdon in his book on the Khasis, page 79, says: " Notwithstanding the existence of the matriarchate and the fact that all ancestral property is vested in the mother it could be a mistake to suppose that the father is a nobody in the Khasi house." It is true that the Kni or mother's elder brother is the head of the house, but the father is the executive head of the new house, where, after children have been born to him, his wife and children live with him.

It is he who faces the dangers of the jungles, and risks his life for wife and children.

In his wife's clan he occupies a very high place, he is second to none but u kni, the maternal uncle, while in his own family circle a father and husband is nearer to his children and his wife than u kni.

These ideas govern the power of a man over property earned by him and the right of inheritance to that property. The son on marriage cannot take his previous earnings away from the house of his mother or sister, where he has been living, to that of his wife. On marriage he becomes the executive head of the house where he lives with his wife and children. His earnings, deposited in his wife's house, are presumed to be part of the common stock of the household, consisting of his wife and children.

Among the Syntengs, the son usually stays in the house of his mother or kurs. Therefore Synteng families make a strong claim to the earnings and property of the son. Among the Khasis a man begins to earn for himself and his wife and future children as soon as he marries. He leaves his mother's house when he marries or after the first child is born. Therefore the Khasis allow much greater claims by his wife and children to the property of a male. Among the Wars of the Shella Confederacy and neighbourhood the man remains more attached to his mother's house after his marriage than among the Khasis, as he works in the groves belonging to the mother's house even after his marriage. This was necessary among the single families which came down from the high hills and settled in the jungles of the War Valleys. Hence it is the duty of the mother of the man to provide for the children of the man; so the children of sons get shares in the property of their father, who gets a share from his mother, and those children have the right of cultivating the Seng land of the family of the mother of their father.

One result of this strict obligation among the Wars of the above country upon mothers and married sons to provide for their children is the rule that they cannot make gifts of their jointly acquired property to some of their children to the exclusion of others.

(End of Mr. David Roy's Note.)

A.—SELF ACQUIRED PROPERTY OF A MALE BEFORE MARRIAGE: NONGKHYNRAW.

The earnings of the male are regarded as part of the family earnings and are placed by him at the disposal of the mother. If a male keeps some for himself, on his death, his mother, or failing her the nearest female kur takes. The passing is not by descent, so the nature of the property is not changed from self-acquired to ancestral. A male whose mother is dead may be living unmarried and not in the house of his female kur and may be keeping his earnings separately. Possibly the taking by his nearest female kur at his death might be considered as an act of inheritance which changes the nature of the property from self-acquired to ancestral in the hands of the heir, so making it not capable of being gifted away by the inheritor.

B.—SELF ACQUIRED PROPERTY OF A MALE AFTER MARRIAGE.

The Khasi husband after marriage goes to live in the house of the mother of his wife or in the house of his wife.

Before the wife has a child, the husband uses sufficient of his own earnings for the maintenance of his wife. The surplus or a portion of the surplus he would quite probably give to his kurs. After the birth of a child, husband and wife work and earn jointly for the child. The Khasi wife works in the fields, which are her own property, carries the produce to market and sells it, engages in trade and keeps the proceeds. The husband works with his wife on the land or may engage in trade with the capital (seng) supplied by her. Such earnings of the man cannot be distinguished from those of his wife.

But a husband may engage in business with his wife and earn as much or more than she does. Such earnings are joint earnings.

Again a husband may acquire separate property under some circumstances. He may engage in business or profession or on Government service. In recent years many new avenues of employment have been opened to men. He does not use the capital or have the assistance of his wife.

The question whether the wife or the husband is head of the household does not supply an answer to the problem of inheritance of such property even if a unanimous opinion on this vexed question were obtainable. She may be head of the household in some ways but she does not control all activities of her husband. He performs

all public and political functions and appears at Durbars. When he has business or professional activities apart from his wife, there is in actual fact no control by the wife. It has been argued that a man cannot acquire property after marriage as the only Khasi term is nongkhynraw (a bachelor's earnings) and so no problem can arise, as all belongs to the wife. This argument has force when it means that when a man brings his earnings to the house of his wife and children he puts them into the common stock of the household and on his death his wife and children inherit; it has force too when it means that the joint earnings of a Khasi husband and wife are for the children; but it cannot be pressed to mean that a man can under no circumstances acquire separate property.

Among Syntengs whose position is not under discussion in this chapter, there is no resident husband and the wife has no rival manager of the home, but among them when Christian husbands have gone to live with their wives, cases have arisen about property of the husband acquired when with his wife. In the chapter below on this subject, the Nongtalang judgment and the prolonged enquiry which followed showed that there existed such property acquired by the husband.

There are men of considerable property to-day who will dispose of that property among their relatives as they deem fit. To hold that a man has no property would mean that the signature of a male on a contract is invalid, save possibly as representing his wife, and that no business can be conducted by a male. The proposition that a man, who in his earnings is quite independent of a wife, has, during his lifetime complete control over his earnings is well established. In truth the position of men vis a vis their wives as regards earnings may vary greatly. One man may work for and with his wife, his work being labour on her land. Another man may have a business or profession and support his wife entirely. If the amount of land acquired by him or the money accumulated by him be more than sufficient for the future maintenance of his wife or his children, he would consider himself free to dispose of the surplus by gifts in his lifetime and it seems that he is legally entitled to do so.

INHERITANCE OF THE PROPERTY ACQUIRED BY A MAN AFTER MARRIAGE.

1.—PROPERTY JOINTLY EARNED.

(a) If there are children, the property earned jointly by husband and wife is taken on his death by the wife. This taking is not viewed as an act of inheritance (ioh pateng) but is

regarded by some as the taking of that which is her own, by others it is looked upon as the taking of a partner by survivorship. On the death of the wife, the daughter inherits, the youngest in preference to other daughters. Failing daughters, the youngest son takes. To him, his kurs succeed.

(b) When there are no children, there is difficulty. The general discussion above on the position of the man was intended to throw light on this difficulty.

The widow cannot claim the whole. The kurs of the man have to perform the funeral ceremonies and can claim a portion. This portion is not more than half.

2.—PROPERTY NOT IN FACT JOINTLY EARNED.

(a) If there are children, the kurs of the man can claim:—

(1) The property acquired by him before marriage and retained by him after marriage. In practice, the kurs would very seldom make such a claim.

(2) Property given to him on marriage by his kurs in order to start him in life. This would be termed " the nucleus " in Hindu Law. The remainder goes to the wife and children.

(b) If there are no children:—

There are two theories. One is that the earnings of a husband while living in the house of his wife must be deemed the joint earnings of husband and wife, although the wife may in fact only engage in household affairs. The idea that what the husband earns and brings to his wife's house is their joint property is used to support this theory. On death of the husband, the earnings of the husband would, according to this theory, be inherited exactly as earnings that had been, in reality, jointly earned. The opinion of U Jugidhon Roy, Wahadadar of Shella, in Chapter VII on Shella customs is to the same effect.

The other theory is set forth in a note by Mr. Rynjah, Sub-Divisional Officer of Jowai, given in full in the appendix. Its substance is set forth here.

He says that some Khasis make the general statement that a Khasi man can have no property either before or after marriage. This is in his opinion incorrect as a general statement of theory and

does not fit the facts of Khasi social life. It is true that the uncle of the wife (u kni) has much authority in religious matters and in the management of the property held by the wife as a member of her family, the ancestral property. But the husband has a position of authority and honour in his own household, consisting of himself and his wife and children. He is always present with them; the uncle of the wife is called in on occasions of importance.

The Khasi saying is, " u kpa uba lah uba iai; u kni uba tang ha ka iap ka im." (The father is he who supports and maintains; the uncle is he who is present only in matters of life and death.)

The husband can be called the executive head of his household in matters which concern the household alone, not in affairs of the family property of the wife where she and her uncle are the responsible persons.

It is very common among Khasis to ask a man who follows a profession or trade in any place outside that in which his wife or parents live, whether he earns for his kurs or his children (lada u kamai iing kur ne u kamai ing khun). Even after a man has married and gone to live with his wife in her house, he may earn for his parents or kurs especially if they are poor. The wife cannot lay claim to such earnings. This is a proof that he can acquire property and gift it to anyone he pleases in his lifetime.

Again a man can hold self-acquired property (nongkhynraw), but even in some circumstances ancestral property (nongtymmen).

Finally, a man can carry on business and sign contracts in his own name which are legally enforceable against him and his own property though the wife's property cannot be affected. This is nowadays an everyday feature of Khasi business life. The position that arises when a man and his wife have no children and the man has entirely separate property earned by himself alone is, in Mr. Rynjah's opinion, as follows. The wife will not be able to claim the whole of his property. She is entitled to reasonable maintenance. As a Khasi husband does not as a rule go to live with his wife until after a child is born, the case does not very often arise. If the childless couple have earned jointly and bought land or accumulated cash, the wife cannot claim all of it on his death if the property be large. His kurs can claim at least half. They have religious obligations to meet for his funeral ceremonies. To the Khasi mind, obligations create rights. The bond between a childless husband and wife is not nearly such a close one as when they have children.

Such is Mr. Rynjah's opinion.

A childless husband can, however, take measures to prevent the difficulty in his lifetime, as his position is one of great independence in these special circumstances. He can make gifts in his lifetime. He can make his kurs the custodians of a portion of his property, placing his earnings with them from time to time. To his wife's house he can bring only sufficient for maintenance of himself and his wife. This step is a natural one for a childless husband. Khasis do not usually go to live with their wives until the birth of a child and absence of children is a valid reason for divorce except among Christians.

On the death of a man who had acted in this way, his kurs would inherit the property deposited with them.

In the case of a man who had not so acted, under the first theory, the wife would claim half; under the second, the wife would get maintenance only. Those who hold the second theory point to the fact that the husband would be working to amass property which would pass from his wife to her kurs or her children by a second marriage, and that no Khasi man would work with such an object. They argue that the idea that a husband's and wife's earnings are legally joint was intended to apply to the usual position of husbands in olden days and should not be used in cases where the position is different, thereby producing the unnatural result that a man is deemed to be working for his wife's kurs.

To this, the supporters of the first theory would reply that the husband can deposit in the house of his kurs if he so desires. This, however, is not so simple, as property may be an account in a bank or landed property of which the title deeds are kept with himself in his wife's house.

LAW MERELY THE EMBODIMENT OF FLEXIBLE FAMILY CUSTOM.

It is necessary to emphasise the fact that these matters are decided by a council of the family which does what appears to be just and proper in each case. So the settlement in one case is not fixed guidance for other cases. There are few decisions by Courts, as efforts by the Courts to induce a settlement in the family have always been made. General rules for the guidance of Courts are required, but unless it be remembered that a Court is administering the custom in

place of the family council and managers, law created by decided cases may assume a rigidity not existent in custom and unsuitable to the needs of the people.

IMPORTANCE OF THE SUBJECT.

The existing indefiniteness may give rise to disputes in the Courts between widow and kurs, but the flexibility of the custom may suffice for adequate decision of each case on its merits. Suppose, however, that a wife sought to restrain a husband from making a gift, a precise determination would be necessary. It is, however, in connection with the proposal to allow wills (vide Chapter IX) that the topic becomes of the greatest importance. Precise delimitation of what a man could dispose of by will away from his wife would become necessary as acute controversy would certainly arise.

POWER OVER SELF-ACQUIRED PROPERTY OF A DECEASED MALE.

I.—POWER OF THE MOTHER WHEN PROPERTY PASSES TO HER.

She can divide it among her other children as she pleases. As it is not ancestral property (ioh pateng) she can deal with it in the same way as if she acquired it by herself. Ka kamai iing kur (earnings by a man when living in his kur's house) pass to the mother on his death, as if she herself had earned them.

II.—POWER OF ANY OTHER KUR OVER SUCH PROPERTY.

It is uncertain whether it can be dealt with as still having the nature of self-acquired, or as having become ancestral.

III.—POWER OF THE WIFE WHEN IT PASSES TO HER.

It does not become ancestral as has been said above. The wife, if she earned jointly with her husband, would have power to gift her share of the joint earnings away from her children. It is submitted that the husband's share of joint earnings by herself and her husband cannot be gifted away from the children. If there be no children

but yet she get the earnings of her husband acquired independently by him to be held as her own sole property, by arrangement with the husband's kurs, she can dispose of it as she likes. But kurs would rarely give property without restriction on disposal.

If there be no children, any property of the deceased husband, jointly earned or otherwise, that is taken by the wife as her sole property by consent of, or by claim of right against, her husband's kurs, descends to her kurs, but during her lifetime, her kurs have no control over her. She can use it or gift it as she pleases (vide the Pohkyntien case quoted in Chapter IX.).

VESTING AND DEVESTING OF PROPERTY.

If a man dies leaving a widow and a child, the widow takes his self-acquired property, but if the child dies subsequently, the kurs of the man claim a share.

CHAPTER IV.

NATURE OF OWNERSHIP BY KA KHADDUH.

KA KHADDUH is the custodian of the family property, not the full heir in the sense known to other systems of law, but a limited heir She is responsible for the performance of religious ceremonies (ka bat ia ka niam, she holds the religion); she cremates her mother and if she be ka khadduh of the whole family, she puts the bones of all members in their final resting-place under the stone (mawbah) of the clan. The expenses of this ceremony are considerable and, for this reason, she gets a larger share of property or in some cases a piece of family property in addition to and apart from her separate share. Members of the family who are unable to earn for themselves and have no children to earn for them have the right of being fed at the iing-khadduh. The actual management is in the hands of her brothers and uncles, and her father is to be consulted. She cannot sell family property without the knowledge and consent of the uncles and brothers.

All the sisters have a right to occupy a portion of the family land as co-parceners and ka khadduh cannot deprive them of this right.

The use of the English term "heir" by the Courts and nowadays by the educated public has given rise to misconceptions. The right over the property of ka khadduh resembles in some ways the rights of the karta of a Hindu joint family. The following are excerpts from Trevelyan's Hindu Law, 2nd Edition, pages 269-274:—

"The property of a Hindu joint family is ordinarily managed by one of the co-parceners, who is entitled to possession of the family property as manager. The father, if living, of a family governed by the Mitakshara School of law would be the manager. In other cases the eldest male member of the family would ordinarily, but not necessarily, be selected."

"When, therefore, we come to define the relation of each member, especially of the managing member to the joint family and the joint estate, we are brought into contact with a relationship which has no counterpart in English law. Neither the term 'partner' nor 'principal' nor 'agent' nor even 'co-parcener' will strictly apply. He is, in fact, a sort of representative owner, his independent rights being limited on all sides by the correlative rights of others, and burdened with a liability, co-extensive with his ownership, to provide for the maintenance of the family."

"He must provide for the usual religious expenses of the co-parceners. He has the ordinary powers incident to the due management of the property; but he can act only with the assent, express or implied of the body of co-parceners."

Of course, ka khadduh differs greatly from a karta as she is the youngest female, possibly quite inexperienced and unfit to do actual management: the karta is the father or an elder male. The duties of management performed by the karta are carried out among Khasis and Syntengs by one or more of the elder male kurs. Their names often appear in documents of sale or mortgage as well as that of ka khadduh. Sometimes the name of ka khadduh may not even appear in the documents, but the transaction is understood to be on behalf of the nominal female owner.

Ka khadduh obtains her important position as the family priestess, the karta as the person most suitable by age, experience and natural respect due from the family.

The reference to the karta has been made only to drive home the point that to call ka khadduh an owner would be an even greater mistake than to apply the term to the karta.

Sir James Frazer at page 461 of his "Folklore of the Old Testament" says that the custom of tracing descent and transmitting property through women may in its origin have been based on the certainty of motherhood compared with the uncertainty of fatherhood. But he says that among the Khasis at the present time, whatever its remote origin may have been, the custom is clearly bound up with the rule which keeps all the daughters at home and sends out all the sons to live with their wives' families. For under such a rule the women are the only lifelong members of the household. He goes on to say: "but if the preference of daughters to sons as heirs is thus explained, the reason for preferring the youngest daughter, as heiress, to all her elder sisters is still to seek. The Khasis themselves account for the favoured position of the youngest daughter by the religious duties which she is bound to perform. . . . This explanation of the privileged position accorded to the youngest daughter is hardly satisfactory, for we have still to ask, why should the youngest daughter discharge the duty of worshipping the ancestors? To this question no answer seems to be forthcoming, and the reason assigned in other tribes for preferring the youngest son as heir, because he stays at home in the parental house after his elder brothers have gone out into the world, seems inapplicable to the youngest daughters among the Khasis, since in that tribe all the daughters apparently remain all their lives in the parental house and there receive their husbands."

But Sir James Frazer had evidently no information about the Syntengs, among whom the men do not leave the parental house to live with the wife. The tradition is that the whole race came first to what is now the Synteng country, and the Syntengs, who keep a stricter form of matriarchal system, are supposed to preserve the older customs.

The daughters do not remain in the parental home after marriage, though their new houses may be built close to that home. The Khasi sentiment is that older daughters should marry before the younger. Therefore the youngest daughter does in fact stay longest in the home, and the reason assigned by Khasis and Syntengs themselves for preference of the youngest may indeed be correct. She is the keeper of the house for her old parents. Khasis say that males are unsuitable for keeping the religion (bat niam) as they are fighters and shedders of blood (nongiapom), but the immense subject of the reason for a matriarchal instead of a patriarchal system is beyond the scope of this book.

The priestly office of the youngest female is the reason why she gets the management of the property, for the property bears the expenses of the ceremonies.

She is not the most suitable manager of the property; indeed she is often the least suitable as having the least experience. Therefore she must be guided in the management by the advice of the uncles and elder sisters.

To understand her position is very necessary because of the wide spread of Christianity. The Christians preserve the ancient system of inheritance but do not perform the religious duties. A tendency has been observed among Christians to regard ka khadduh as having the unrestricted rights of an heir under other systems of law. There would be great injustice to other members of a family if the Courts in any way favour this new idea.

In Chapter II the rights of members of a family in the land of the family or clan have been explained. When land is valuable, as near Shillong, disputes often arise about giving consent to sales or leases and about profits from the family land. The main difficulty arises when there is family land, unoccupied, but suitable for sale or lease as building sites, or valuable for its forest produce. Ka khadduh and the managers of the branch of ka khadduh may claim that the profits from such land should go to ka khadduh and her branch, but the other branches do not admit this claim and demand a division of the profits or rental. Some families have made written agreements for the purpose of controlling such disputes, but without entire success. A right to partition, which is the remedy for disputes in a Hindu joint family, does not exist. In Malabar, where descent is reckoned through the female, the lack of a right to demand partition has caused many intricate cases in the Courts of the Madras Presidency, between the karnavam (the male manager of the family) and the branches of the family about land occupied by a branch.

Among the Khasis, the Council of the family ought to settle such matters. This is done according to what seems just and expedient in the circumstances. The settlement in each case cannot and should not be taken as an exact guidance for other cases.

It seems that the rule of Hindu law would apply also to Khasi law, that a co-sharer cannot sue for a definite share in the land, but has only a right to enforce joint possession by a suit; but where co-sharers have permitted one of their number to occupy a particular portion they cannot oust the one occupying.

CHAPTER V.

LOSS OF RIGHT OF INHERITANCE.

The right to inherit may be lost by.—

1. Commission of a "sang" (sacrilege, taboo). The sangs especially affecting inheritance are:—

(a) Marriage to a person of the same clan or of a clan with which intermarriage is forbidden.

This is the worst crime that a Khasi or Synteng can commit. It is punished by expulsion from the family and loss of all rights in the family property, the culprit being driven from the family land. Christians observe this practice of exogamy.

No case is known concerning a claim to family land by a Christian who has intermarried in this way. There is reason for supposing that the same penalty would be incurred.

(b) Murder by a mother of her own child.

2. Misconduct.

A mother may consider a child to be disobedient and undutiful or of defective moral character. If she divides her property during her lifetime, she may give no share to this child. Even among the Wars, where equal division is the rule, a child can be so deprived.

On death of a parent, the uncles and aunts may consider that a child has behaved so badly that it is unfit to inherit.

The child is not allowed to take part in the cremation ceremony and is deprived of its inheritance.

If ka khadduh is considered unfit for management of the family property, an elder daughter may be made the keeper of the iing-khadduh and heir of the property.

If ka khadduh goes to live in a distant place from where she cannot or does not come to perform ceremonies, the family can choose another.

U Jugidhon Wahadadar of Shella reports that in the Shella Confederacy if ka khadduh of a seng leaves the village in which the family seng land is situated and goes to live in a neighbouring village the kurs can choose another as ka khadduh.

There is a ceremony of expulsion and deprivation of rights. This is ai-khawduh (to give the last share of rice). Another form is khi-lai-nuid (to shave). The grave step of a ceremony is rare and is not essential for depriving of the right to property.

In cases of dispute, the Courts would have to decide whether the deprivation was bona fide. In a case of deprivation by kurs after death of a parent, the most important point for enquiry by a Court is whether the family as a whole desired it. There is no case known to serve as a guide how a Court should decide on the facts and merits.

3. Conversion to Christianity or other religion.

This might affect ka khadduh, who has religious duties to perform. It would not nowadays deprive a member of a family of a right to occupy family land, except apparently in Ri-Shieng in the War country or in property specially kept for providing expenses of religious ceremonies among highland Khasis or Syntengs. The subject is dealt with in the chapter on inheritance by Christians

4. Khang apot, a War custom of deprivation of the right of inheritance for failure to bear a share of expenses for religious ceremonies or in times of difficulty. The right may be subsequently regained when payment is made. The practice is described in Chapter VII.

5. Illicit sexual intercourse by a Synteng widow would cause the loss of property allowed her for maintenance. See Chapter VI. The same would happen in certain circumstances among Khasis.

6. The Khasi custom is that a woman cannot re-marry after the death of her husband until one year is passed and until she has given the bones of her husband to his kurs. If she breaks this custom, she loses her right to property of her husband. If there are children, they will take the property and make over the bones. The widow who acts in this way has to pay a fine (jynsang) to the kurs of the husband, who will perform a ceremony of divorce between her and the deceased.

CHAPTER VI.

INHERITANCE AMONG THE SYNTENGS (EXCLUDING WARS).

By Synteng custom, the husband does not go to live in the house of his wife. He remains in the house of his mother or female kurs and only visits his wife. His connection with his kurs is therefore more close than that among the Khasis. Differences in the customs of inheritance are attributable to this difference in mode of life and are only in the succession to the self-acquired property of the male.

INHERITANCE OF ANCESTRAL PROPERTY.

The system is the same as that among Khasis.

RAP-IING.

This custom among the Khasis has been described above. The Syntengs have the same system.

NOTE:—The description of rap-iing in the collection of customs by Rita is worded so as to give a confused and in one respect a wrong impression. Rap-iing cannot occur if a person dies leaving no heirs. In such a case succession is by the ordinary rule: a nong-rap-iing is taken by a living person and the nong-rap-iing may be the female who would naturally succeed by ordinary rule or may be another. She must be a female of the family or clan.

INHERITANCE BY MALES OF ANCESTRAL PROPERTY.

The principle is the same as among Khasis.

INHERITANCE OF SELF-ACQUIRED PROPERTY OF A FEMALE.

The same as among Khasis.

INHERITANCE TO SELF-ACQUIRED PROPERTY OF A MALE.

Before marriage: Self-acquired property of a man who dies before marriage goes to his mother or kurs among Khasis.

After marriage: The usual habit among Syntengs is that the man after marriage does not go to live in the house of his wife, but lives with and works with his mother and kurs; the rule is that the mother of kurs inherit.

To this rule there are exceptions.

Mr. Heath, Sub-Divisional Officer of Jowai in 1882 and Mr. Rita, Sub-Divisional Officer from 1888 to 1894 made a collection of customs.

Rita says that if the ceremonies of kit khih and ri-shieng are performed, the wife can get a portion (in some doloiships half, in the others one-third, etc.) of the self-acquired property of her husband at his death. He describes kit khih. " When a couple have got children and have been living for a long time, then by mutual agreement of the wife and the mother or nearest relative of her husband, the wife can get a monopoly of the income of her husband by a ceremony called kit-khih. In such case the wife sends a gourd (u klong) full of liquor to the mother of her husband or his nearest relative and then the husband is at liberty to give and gives a part of his income to his wife. After two or three years the wife again sends for the second time another ' u klong ' with liquor, for getting the monopoly of the income of her husband, to his mother or nearest relative. Then the husband leaves the mother's house and goes to that of his wife and the mother must give some property to the wife, and then the husband works for his wife and gives his whole income to her and then the wife cannot remarry and must also deposit her husband's bones in her family urn or must ri-shieng, as they call it. If she violates the above custom, i.e., remarries with any one, then she will have to return all property belonging to her husband to his relatives."

Ri-shieng (placing of bones beneath the clan stone) is thus described:—

" When a man dies leaving acquired property and if the wife undertakes not to marry again and keep his bones (which custom is called ri-shieng) she will inherit a part of his property."

The wife places the bones with those of her own clan under her own clan stone.

Again, " If a man dies and the wife pays the expenses of burial and consents not to remarry and his bones are kept with her clan bones, then she acquires property left, generally to the value of one-third." (He is writing of Jowai, in other doloiships the share varies.)

" If the widow does not perform the funeral ceremonies and ri-shieng, or if she remarries, she has not only no right to her husband's self-acquired property in his possession at death, but returns all property given to her by her husband." (Rita.)

Heath says, " When the widow consents to pay the costs of her husband's funeral expenses, the husband's heirs give her half of her husband's acquired property, for she has consented never to marry again. If she marries again, she would have to return this half share to her husband's heirs."

Heath does not mention by name the ceremonies of kit-khih and ri-shieng, but the reference to payment of funeral expenses apparently alludes to ri-shieng.

The customs are correctly described but they are exceedingly rare at the present day. The kurs of a man do not allow ri-shieng to be done by the wife. Kit-khih would naturally be performed at the time of marriage of the children when the father desires to make a gift to them without interference by the kurs.

The customs were reviewed in the Nongtalang case (Ka Perimai and others v. Ka Kat, U Jhon and others) decided on appeal by the Deputy Commissioner on 24/7/1914.

The facts were as follows.

U Siang, a Christian Synteng had married Ka Kat over forty years before and had lived in her house in the War doloiship of Nongtalang.

They had five sons and four daughters, represented in the case by U. Jhon, the eldest son. U. Siang died in 1908 leaving two groves and a house. One grove was planted on land obtained without payment, as it was banned to cultivation by the Synteng religion, the other grove was purchased by U. Siang in the joint names of himself and his wife.

Ka Perimai and other daughters, themselves Christians, of a deceased sister of U. Siang claimed the groves in the Court of the Doloi of Nongtalang in 1913, alleging that they had allowed the widow and children of U. Siang to remain in possession for four years merely out of sympathy.

The Doloi decided in favour of the wife and children. On appeal the Sub-Divisional Officer, Mr. Shadwell, awarded half the groves to each party. On appeal to the Deputy Commissioner, the side of Ka Perimai admitted the claim of the wife to half of the grove purchased in the joint names of husband and wife but claimed the rest. The Deputy Commissioner, Mr. Dentith, heard the appeal.

A judgment of Colonel Clarke, Deputy Commissioner, in the case of Ka Syndur Shulai versus U. Riang Shulai, No. 41 5/1868 (a Synteng case), upheld by the Chief Commissioner, was quoted at the bar. As this is, at times, quoted at the present day, the important passage in the order of the Chief Commissioner is here given.

" There is no doubt conflicting evidence as to the custom of the Syntengs but the weight of evidence appears clearly to support the view that the mother does not inherit her married son's property unless at the time of the son's death he is living in his mother's house. Under these circumstances, in the absence of clear and reliable evidence to show that the mother is, according to the custom of the country, entitled to inherit, it seems to the officiating Chief Commissioner that it would be most inequitable to rule that the wife is not the preferential heir."

The Deputy Commissioner felt himself bound to respect this decision but he distinguished the case before him as a War and not an upland case. The truth is, however, that the decision was erroneous. The exact contrary was stated in 1918 by Mr Shadwell, Sub-Divisional Officer, who wrote:—" If kit khih is not performed and a man goes to live and earn with his wife, as is sometimes the case, the kurs can lay claim to all property on his death." He undoubtedly meant, whether there be children or not.

The importance of the case lies in the following argument put forward. U. Siang, a Christian, had not continued to dwell in his kur's house after marriage, according to Synteng custom, but had gone to live in the house of his wife, like Khasis do, because Synteng Christian males had adopted this practice, being encouraged therein by the Christian missionaries. It was urged that, for this reason, the old Synteng custom of inheritance by the kurs of self-acquired property of the man ought not to be applied, but that the wife and children should inherit.

The Deputy Commissioner refused to recognise any new rule of inheritance for Christians.

He proceeded, however, to refer to Heath's diaries in which the inheritance customs of Amwi, Nongkhlieh and Suhtynga Doloiships are described and quoted the words, " a man can hardly under any circumstances possess ancestral land; his property must almost necessarily be self acquired. Self acquired property is that earned or acquired by a man or woman in his or her lifetime. Generally speaking a man's acquired property would go [illegible] mother or sister

" It would not go to a man's wife or children, male or female, for they are of another clan necessarily. The exception is that when the widow consents to pay the costs of the husband's funeral expenses, the husband's heirs above described give her half of her husband's acquired property, for she has consented never to marry again. If she marries again, she would have to return this half share to her husband's heirs."

Heath had declared (erroneously, because Nongtalang is War and Nongkhlieh and Suhtynga are Highland) that Nongtalang customs were exactly the same as those of these doloiships.

The Deputy Commissioner found that the wife had paid the costs of the Christian burial of U. Siang and had no intention (she being old) of remarrying, he therefore awarded her the house and half of the groves.

NOTE ON THE JUDGMENT.

The judgment of the Deputy Commissioner and the subsequent enquiry made by him form the first detailed investigation into custom made by the Courts. Much that was not available at the time of the judgment came to light.

It became evident that the defect in the judgment lay in proceeding, from Heath's incomplete record, to hold that Christian burial by the wife can have the effect of a Synteng cremation ceremony and the keeping of the bones by the wife.

Kit-khih and ri-shieng were very rare customs and were performed by the wife with the consent of the kurs; they mean that a man is cut off from his own clan; Christian burial does not have this effect. Again the expense of the ceremony of placing the bones under the mawbah is great and the property rightly goes to the person who bears this expense; the cost of a Christian burial is trifling.

The Deputy Commissioner in his subsequent considered report put the matter on the correct basis of a change of the mode of life.

The main importance of the case is that a new system for Christians came very near. This can be avoided only by the fact that because Khasis, Christian and non-Christian, go to live with their wives in the manner of Christian Syntengs, so the law existing for Khasis can be used for Christian Syntengs, thus preserving a system of inheritance devised in pre-Christian days.

The Nongtalang judgment aroused protests from the leaders of the Christian community. They pleaded that Christian husbands went to live with their wives and when they died had Christian burial without the old custom of placing the bones beneath the stone of the husband's clan or of the wife's clan. Nevertheless the kurs claimed all his property; they could, as they called it, beh-khih (follow the earnings). The cases in which such claims were made were exceedingly rare, but the Nongtalang case would be a precedent for any kurs so wishing.

There followed enquiries into customs and conferences from 1915-18. The discussions embraced also succession by Christians to ancestral property and wills. Although the topic of succession by Christians falls more properly under the special chapter of Christian inheritance, the letters and order must be quoted here for the reason that the Deputy Commissioner departing from the view taken in his judgment in the Nongtalang case, advised Government to take mode of life as the basis of custom both for Christians and non-Christians and not to force customs suitable for a society in which the husband resided with his kurs and not his wife upon a society in which the habit of residence with the wife had arisen.

Paragraph 2 of his report (letter number 3793 dated the 17th July 1918) is reproduced.

"2. The first proposal of the memorialists is that the self-acquired property of a Christian should be inherited by his wife and children: this proposal is, in my opinion, logical, equitable and theoretically unexceptionable because the Synteng Christian husband, unlike the average Synteng non-Christian husband who lives with and works for his kur and only visits his wife and family in the night-time, actually lives with his wife and family, who assist him to earn money, tend him in sickness and health during his life time and duly bury him on his death. In fact the mode of life of the Christian husband after marriage is very similar to the mode of life of the non-Christian husband after the kit-khih ceremony. It might be, as Mr. Shadwell points out in para. 6 of his Report, that there are points of divergence between the Christian marriage and the non-Christian kit-khih custom, but this is, in my opinion, immaterial, the all important fact being that the mode of life of the Christian husband and the non-Christian husband who has performed the kit-khih ceremony is

practically identical and is also totally dissimilar from the mode of life of the non-Christian husband who has not performed the kit-khih ceremony. In the two former cases the husband lives with and works for his wife and children; in the latter case he lives with and works for his kur. Clearly, therefore, in the former cases the husband's self-acquired property should be inherited by his wife and children whereas in the latter case it should be inherited by his kur. It is not a question of religion: it is a question of mode of life. So if the orthodox Synteng custom, whereby self-acquired property is inherited by the kurs and not by the wife and children were to be rigidly enforced after the manner of the laws of the Medes and Persians there is no doubt that it would operate very harshly in the case of the Christians, and Mr. Williams as a matter of fact contends that non-Christians " do not hesitate to claim all when they ' beh-khih ' (claim acquired property) and the widow is left to shift as best she can." But Mr. Williams' contention appears to be a mis-statement of fact as " beh-khih " cases are very rare: there was one case in 1876, another case in 1888 was taken on appeal to the Chief Commissioner, and a recent Nartiang case was possibly a " beh-khih " case, while the Nongtalang " beh-khih " case of 1914 was between Christians. So it seems to me that Mr. Shadwell is correct in saying that in actual practice the wife and children do succeed to self-acquired property and not the kurs, for even the memorialists (of whom Mr. Williams is one) admit, in Para. iii of their Memorial, that " during these sixty years the heathen Synteng relatives of a Christian never laid claim to or demanded such acquired property of the wife and children of a deceased Christian." In these circumstances it might then fairly be urged that no substantial grievance exists and that there is consequently no necessity for legislation. The memorialists, however, are obviously apprehensive lest the decision in the recent Nongtalang case might result in the revival of the orthodox custom whereby (in Mr. Williams' words) " the best and most enlightened people here are open to be mulcted out of their hard-earned property by any distant heathen relative that likes to step forward with a claim," so if their request for legislation be acceded to it is clear that it will be undertaken not to remove an actual and substantial grievance, but rather to obviate a future and potential disability because (to quote para. iii of the Note of a discussion held at Jowai on 14th December, 1916), " as regards self-acquired property the conference were inclined to agree that the Courts at present make no difference

between Christians and non-Christians." The memorialists are accordingly crying out before they are hurt and it is further to be noted that the Nongtalang case is a proof that the Synteng Christian community is not unanimous on this question of inheritance of self-acquired property.

Mr. Shadwell also reports that many Christians, especially at Narpuh, are averse from a new law of succession, as they still retain a feeling for their kurs, while some married Christians are even living with their kurs. In these circumstances I should feel inclined to advise that no legislative action is at present necessary and that the Syntengs (like their neighbours of the Khasi uplands who in pre-British days instinctively recognised that the acquired property of a husband who lived with and worked for his wife and children ought as a matter of justice, equity and good conscience to be inherited by them and thus established a custom which has been duly observed by their descendants) should be allowed, if possible, to work out their own salvation were it not for the fact that those Synteng families in which the husband lives with and works for his wife and children are now undoubtedly living in a state of intense disquiet and insecurity for they feel that a veritable sword of Damocles is hanging over their heads, as according to strict Synteng custom (i.e., the law of the land) their self-acquired property may be claimed after the husband's death by covetous and grasping kurs (not necessarily by non-Christian kurs but very possibly by Christian kurs, as in the recent Nongtalang case, for the non-Christian, to their credit be it said, have on the memorialists' own showing, not attempted to file any beh-khih cases during the last sixty years). In fact for non-orthodox Syntengs their not unreasonable apprehension of the possible enforcement by the Courts of the " beh-khih " custom is the burning question of the day. Now a dispassionate observer cannot possibly have any sympathy with a Christian or non-Christian kur who endeavours to " beh-khih " the self-acquired property of a man who has all along been living with his wife and children, and it would in my opinion be a wise and statesmanlike act to allay those feelings of disquiet and insecurity which are now agitating the minds of the more enlightened members of the Syntengs race. I would accordingly recommend that it be enacted by Government that the self-acquired property of a Synteng who lives with and works for his wife and children be inherited on his decease by his wife and not by his kurs. Each case would then be a question of fact, not a law, the test being, not the religion of the

litigants, but their mode of life. Of course the great majority of the Christian Syntengs live with their wives and families just as 75 per cent. of the non-Christian Syntengs live with their kurs, so the two communities will automatically fall into two separate and distinct water-tight compartments, but as these would not be hermetically sealed (for a Christian can always become a non-Christian and vice versa) no great harm will ensue. On the other hand the proposed enactment will set people's minds at rest: there will be certainty where now uncertainty obtains: there will be no question of religion but only of mode of life (a test already accepted by the non-Christians as is shown by their attempt to solve the problem by means of the " kit-khih " custom) while the absolute impartiality and equity of the principle underlying the enactment cannot be questioned or gainsaid except by a microscopic minority composed of a few disgruntled kurs. In these circumstances I am strongly in favour of the present practice of the Courts (vide Para. 8 of the Note of the Conference held on 14th December, 1916) being formally validated by the Government."

The orders of Government were issued by letter 9708-J dated the 10th December, 1918

"2. The Chief Commissioner understands that it is the custom among non-Christian Khasis that a man lives with his relatives in his mother's house even after his marriage, and that all property which he acquires while he lives thus goes, on his death, to his mother and her relations, to the exclusion of the widow and children. If, however, a man performs the ' kit-khih ' ceremony, and, leaving his mother's house, sets up a separate establishment with his wife and children, any property acquired by him, after the performance of the ceremony, in some doloiships goes wholly to the wife and children, and, in other doloiships, is divided between them and the kurs; in either case the widow's inheritance is conditional on her keeping the bones of her husband and not remarrying; if she remarries, the whole of her husband's property reverts to the kurs. The conditions of life among the non-Christian Synteng appear to be in these respects quite different from those among the Christians, who, on marriage usually leave their ancestral home and set up a separate house with their wives. This has been so far recognised that it has only been in very rare instances that the relations have claimed the self-acquired property left by a married Christian Synteng. You agree with the Deputy Commissioner in considering that no legislation is necessary

but that Government should give instructions to courts in the Khasi and Jaintia Hills that in the case of Christian Syntengs the widow and children should inherit unconditionally the acquired property of the husband. The Chief Commissioner accepts your opinion that legislation is unnecessary, but it would be difficult for the executive Government to issue instructions to Courts as to the decision they should give in any particular class of cases that come before them. He can only invite attention to the existing law and custom and leave it to the Courts to decide each case on its merits in accordance with such law and custom. The position appears to be that the old custom whereby a man's kurs could inherit his self-acquired property to the exclusion of the widow and children, was based on a condition of social life which does not exist in the present Synteng Christian community, and that it is not usual among Christian Syntengs for the self-acquired property of a man to be disposed of in accordance with the alleged old custom. It is for the Courts to consider whether in such circumstances the alleged old custom, even if proved at one time to have been universally recognised, should be held to be applicable to and binding on the present Christian Synteng community. In this connection I am to invite consideration of the lucid and authoritative statement on the recognition of customs given by Sir Ernest Trevelyan in his ' Treatise on Hindu Law ': ' The Courts cannot give effect to a custom unless it be ancient, definite, continuous, notorious, and reasonable. It is invalid if it be opposed to an express enactment of the legislature, to morality, to public policy or to justice, equity, and good conscience. A custom must be established by clear and unambiguous proof, and must be construed strictly.' "

Although no case has come before the Courts since 1918, there is no doubt that arguments based on " kit-khih " and " ri-shieng " will no longer be relevant in Christian cases. It is submitted that the Synteng Christian husband living with his wife ought to be regarded by the Courts as having a position exactly similar to that of the Khasi husband, discussed in Chapter IV. If so, difficulty will not arise.

NO NEW RULE AS YET LAID DOWN FOR NON-CHRISTIAN INHERITANCE.

Government was silent about non-Christians who go to live with their wives without " kit-khih." Their number is said to be increasing. For the present the Courts may uphold the rule of

' beh-khih " (follow the earnings, i.e., the right of kurs to the earnings of the man although married), but if the practice of living with the wife becomes common, there may arise a demand to apply the reasoning of the Government letter to their cases and to make their legal position similar to that of Khasi husbands.

Synteng husbands of respectable position, although they do not live with their wives, nowadays feel it their duty to contribute to the support of their children. The present position is that on death of the husband the kurs can claim :—

(1) The return of all property given to him at or before marriage;
(2) the proceeds of such property;
(3) all property acquired by him after marriage, if it can be shown that it was separately acquired by him.

If there be no children, the kurs can claim all, leaving the wife only sufficient for maintenance so long as she remains unmarried. If there be children, the kurs can still claim all, leaving sufficient for maintenance.

(4) If land be acquired by the husband by money earned by himself, in the joint names of himself and his wife, one-half can be considered as a gift made to his wife. The claim of the wife to one-half of a grove purchased by the husband in the joint names of himself and his wife was admitted by the husband's kurs in the Nongtalang appeal.

(5) In the case of joint earnings or jointly acquired property, when there are no children, the kurs can apparently claim the share of the husband in these earnings. They have no claim to the results of labour by the husband on his wife's land or labour by the husband in business for which his wife supplies the capital, whether there be children or not.

It seems that even if there be children the kurs can claim, but the position is obscure.

The discussion of the point in Chapter III dealing with Khasis may be read.

The maxim that underlies Khasi and Synteng inheritance of whatever kind is, " ka jaid lane ka kur kaba kit iaka pop jong u briew, ka dei ruh ban ioh ia ka hok jong u " (the clan or the kur who is responsible for the misdeeds (deficiencies) of a man, ought to get his rights).

It is his kurs who look after him in sickness or poverty and to whom he turns for assistance in trouble. They, as represented by ka

khadduh, are responsible for his cremation (although his children may, if they wish, meet the expenses or actually perform the ceremony), have an obligation to pay his debts and have the supreme duty of placing his bones under the clan stone to save his spirit from the fate of wandering unhappily on the hill side.

It is the duty of the wife's kurs to look after her and the children but if they are unable for good reason to do so, the husband's kurs would, if he had left self-acquired property, allow for their maintenance from this property.

Settlement is made by the family according to the circumstances of each case and recourse is not had to the Courts save in rare instances. In the enquiry of 1916-18 no case law was discovered.

CHAPTER VII.

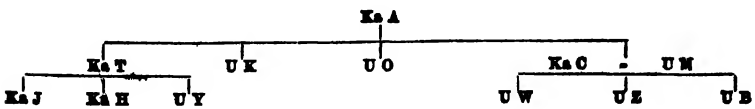
INHERITANCE AMONG THE WARS.

THE main distinction between the customs of the Wars, both Khasi and Synteng, and the highland people is that War children take definite shares when they inherit, the difference between Khasi Wars and Synteng Wars is that among Khasi Wars the males inherit as well as females.

I.—THE SHELLA CONFEDERACY.

Their customs are typical of those of the Khasi Wars.

For the understanding of the Shella customs, a knowledge of the system of keeping the bones (ri-shieng) and keeping the family house is necessary. Women keep the bones, a man cannot keep the bones. If a woman dies without daughters, her bones and those of her sons are kept by her female kur.



The daughters Ka C and Ka T look after the bones of Ka A in the house of Ka A.

If Ka T, U K and U O die before Ka C, she will take care of their bones.

If Ka H and U Y die before Ka C, then Ka J and Ka C will take care of the bones in the house of Ka C.

If Ka C has only sons, W, Z and B, then Ka J (Ka T has already died) keeps the bones of Ka C and of W, Z and B, her sons, when they die.

On the death of Ka T, her daughter Ka H takes her bones and puts them under a stone (maw) or piece of wood (dieng) with funeral ceremonies, but this stone is not the big stone (mawbah) of the family. Subsequently the bones are placed in the mawbah or diengbah of the family when all the family joins in the ceremony.

When Ka C dies, her sons W, Z. B, call Ka J to keep the family house. When they marry, W, Z and B go to live in the houses of their wives. They cannot bring their wives to occupy the house of Ka C.

If Ka C and U M make a new house, U M and his children must remove from the site of the family house and let Ka J build a house on the old site and keep the bones.

If U M builds a house with U K and U O for Ka C, then U M must leave the house and Ka J occupies it.

After the death of Ka C, her minor sons can go to live with their father or can remain with Ka J in the house of Ka C. Ka J becomes the keeper of ri-shieng land which was with Ka C. The sons of Ka C, U W, U Z and U B, can stay with Ka J as long as they live. After their death, the children of these sons, W, Z and B, can be maintained from the proceeds of the fruit trees planted by the labour of W, Z and B on the ri-shieng land, but only if the daughters of Ka J or Ka J herself feel compassion for them. The children of the sons, W, Z and B, cannot plant in the ri-shieng.

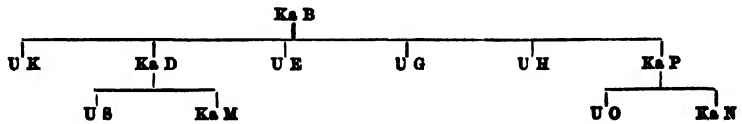
When a male dies, a male relative takes the bones and gives them to a female relative to keep temporarily. Afterwards the bones are placed under a stone or in a piece of wood or in a basket with the bones of their maternal ancestors. The children of a father can perform ceremonies (ban phur ban diang), but his female kur must be present to direct (ban batai ia ka niam). The children may arrange with his kurs to keep the father's bones under a separate stone or in a separate piece of wood, but this must not be in a place where there are the bones of the family of the mother of the children. The bones of the father may be kept for years in this place, and in some cases they are never handed over to his kurs.

Even a mother's bones may be kept by the sons, the youngest having preference, if there be no daughters. But a female kur of the mother must be present to superintend (ban pyni ia ka niam).

The people now in the War country left the high lands and their relatives there, so they began mawbahs for bones in the War country. If the family splits owing to a quarrel, a branch can make a new mawbah or dieng.

Example:—A, a mother, has two daughters. C and D. They separate, and C makes a new mawbah. C has two daughters, E and F. These daughters die without female children. Ka D cannot take the bones of E and F to the family mawbah. Therefore a separation of burial-place (pait maw pait dieng) is a very serious matter, as among Khasis.

KIT APOT AND KHANG APOT.



Apot means expenses in time of religious ceremonies after death, illness or difficulty. Suppose Ka P dies or is in difficulty and expenses have to be met, but her children refuse to pay, then the other members of the family will contribute according to their means. In the same way if Ka D dies and Ka M refuses to pay.

The children of Ka P or Ka D by refusing to pay would be khang apot and cannot inherit to their mothers. Those who paid would take the property instead of them, but cannot sell or lease this property because the children who ought to have paid may in future pay and will then get back the property.

In the same way, at the time of collection of the bones for the mawbah of the family, those whose duty it is to pay but who do not pay, are treated as khang apot.

When the mawbah or diengbah becomes out of repair, a ceremony is needed, and the keeper of the ri-shieng land will call all the kurs to restore it and to gather again the bones under the stone or wood. The keeper of the ri-shieng land must bear the expense unless she is too poor, when all the kurs both males and females assist, on penalty of being made khang apot.

Children must burn the body of their parent and pay for the expenses; any child refusing becomes khang apot.

THE RI-SHIENG LAND.

This land is given to the youngest female (ka khadduh) because she maintains the religion and keeps the bones (ka bat ia ka niam bad ka ri ia ki shieng). The succession is to the youngest female as has been described above in the explanation of the custom of ri-shieng and the keeping of the family house, just as the iing-khadduh descends among Khasis.

The property of the Wars consists mostly of groves (ki bri) of orange, betel-nut, fruit trees, and pan vines. Therefore they allot a grove as ri-shieng. The land always remains in the name of ka khadduh; she cannot sell or lease it. The management lies with the kurs.

If there be empty land in the ri-shieng or if the trees die and ka khadduh cannot replant the whole grove, her sisters and brothers can plant also. If they plant together with her, all can enjoy the proceeds together. They can plant separately, but they share the profits with her.

After the death of the brothers of ka khadduh, their children cease to have the right to cultivate in the land, but can pluck the fruit of the trees planted by their fathers. The children of the sisters of ka khadduh can plant and replant trees after the death of their mothers, because they belong to the same family (naba ki ruh ki dang iadei hi para rai shieng ne shi kur), and ka khadduh cannot carry on the religion herself without the common assistance of the kurs (bad kam lah ban pymaid niam marwei khlem da iamynjur lang baroh shikur ne kpoh).

If she have no children, a woman can make a ri-shieng land and give it to her youngest sister.

So long as the bones are kept under the burial-stone (mawbah) of the family, there is one ri-shieng land for the whole family and new ones are not made.

If the family splits owing to quarrels, the members dividing from the rest may make a new mawbah or dieng, and of course they would create a new ri-shieng land.

The keeper of the ri-shieng is not bound to support poor members of the family from it.

In some places the ri-shieng land is left in the joint possession and enjoyment of all the daughters and not the youngest alone.

ANCESTRAL PROPERTY.

1. Ri seng, property descending from remote ancestors, male or female.
2. Ri nongtymmen, property descending from ancestors, male or female, not so remote.
3. Ri kmie ri kpa, property from parents.

All meetings about matters concerning ancestral property must be held in the iing-seng or iing kmie iing kpa, which cannot be removed from the original village of the parents or founders of the seng. If there be no house in existence, a temporary house must be made for the meeting or for the performance of ceremonies.

ANCESTRAL PROPERTY.

INHERITANCE TO ANCESTRAL PROPERTY OF A FEMALE.

1. A married woman with children.

The children of the mother, whether male or female, inherit equal shares, except that the eldest child, whether male or female, gets an additional piece of land and the youngest daughter (ka khadduh) gets the family house and the ri-shieng land.

Inheritance is per stirpes (kpoh), not per capita.

Example I—A woman has four children, A, B, C, D, but C has died in the lifetime of the mother, leaving two children, E and F. A, B and D take a one-fourth share, though A as eldest usually gets something in addition; E and F get each a one-eighth share.

Example II—A woman has married three times. By the first marriage she has one child; by the second marriage, three children; by the third marriage, two children.

All the six children get equal shares on her death, the eldest usually getting something in addition. The youngest female gets the ri-shieng in both examples.

Division of the property is usually made soon after the death of the mother, but sometimes there is delay for as long as several years because the expenses of the funeral have to be met.

Ornaments are usually given by the mother to the children in her lifetime: ornaments which remain after her death, together with the cash after the cost of the funeral has been paid, are divided.

Ka khadduh gets the household articles.

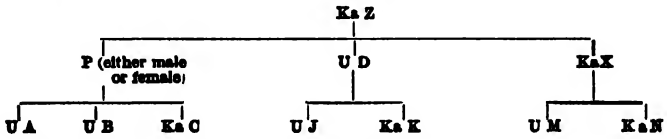
The heirs partition the groves but they do not partition that part of the seng land which lies waste.

2. Property of a married woman without children.

Ancestral property returns to her relatives. If she has ancestral lands but her husband has worked in them and planted fruit trees, in Shella, since 1895, the husband at her death loses everything, as her relatives inherit.

U Jugidhon Wahadadar declares that this was not the old custom, according to which the trees should be shared equally between the husband and the relatives of the wife. He condemns the new custom as unfair to the husband.

Any cash brought by the wife from her relatives on marriage is returned to her relatives on her death.



Ka X is the keeper of the ri-shieng land.

If P dies and A, B and C die also, the branch of P is extinct (iapduh).

If P is a male, his ancestral (and also his self-acquired property) is shared by U D (or his children) and Ka X (or her children). But half of the self-acquired property of P and his wife is retained by his wife or , if she be dead, by her relatives.

If P is a female, exactly the same thing happens.

ANCESTRAL PROPERTY OF MALES.

Owing to the custom of inheritance by the males of the Shella Wars, much ancestral land is held by them. Husband and wife live together like the Khasis and unlike the Syntengs. Children, male and female, inherit the property of their father in the same way as the property of their mother.

Example.—A man has married three times, leaving one child, A, by the first marriage; three, B, C, D, by the second; and two, E, F, by the third. In the villages except Shella village, A gets one-third, B, C, D get each one-ninth, E, F, get each one-sixth. That is to say, the property is first divided into three portions, and each portion is divided among the children of each marriage.

This used to be the custom in Shella village, but since 1898, the custom is to give the children, A, B, C, D, E, F, equal shares—i.e., they each get one-sixth. Mustoh follows Shella.

If a married man dies childless, his ancestral property goes back to his relatives. If he brought any cash on marriage, the relatives of his stock (kpoh) take. If he die when his children are minors, the ancestral property is kept by his relatives on behalf of his children, who are maintained from the proceeds until they are of age to take the property.

If a married man, who has not got his share of ancestral property because his parents are still alive, dies leaving minor children without means of support from his self-acquired property, and his wife is too poor to support them, his parents have a duty to help the children. If a man acknowledges that a child is his own, the child inherits to him, although he was not married to the mother of the child.

INHERITANCE TO SELF-ACQUIRED PROPERTY.

NOTE.—The succeeding sections on Time and Manner of Inheritance and the Examples of Inheritance will explain the statements in this section.

The line of succession is the same as for ancestral property.

Property acquired by an unmarried person is taken by the mother of the person acquiring it. Failing her, the kurs take.

Self-acquired property of a female after marriage descends in the same way as her own separate share of ancestral property.

Property acquired jointly by husband and wife is inherited by the children, each child taking an equal share. Division among the children is not made until after the death of both husband and wife; immediately on the death of the husband the wife takes. If there be no children, the relatives of the husband inherit his share and the relatives of the wife her share; the division is usually into two equal share and is made on the death of the husband or wife. The surviving partner of the marriage takes his or her share.

If a childless husband and wife have acquired a grove jointly and planted it together, on the death of one of them, the grove is divided equally and the relatives inherit one half-share.

Property acquired by the husband descends to his male and female children in equal shares. If he has no children his relatives inherit, but his wife has a claim to sufficient for her maintenance.

If a husband and wife are divorced, the husband cannot take his self-acquired property away with him so as to deprive his children

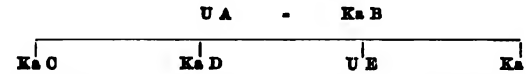
of it. He can only keep what he has brought from his kurs on her marriage. (The children get their share in his ancestral property on his death.)

If a man dies when his children are minors, his separate self-acquired property is left with the wife for the children.

If a married man works and acquires property by his own efforts, the wife merely keeping his house, yet the property is considered to be joint between husband and wife and comes under the rules above.

So if he dies childless, his relatives only get half.

THE TIME AND MANNER OF INHERITANCE.



U A and Ka B have each got ancestral property and they have also got property jointly acquired by themselves.

The ancestral and self-acquired property of U A and Ka B is divided among the children after the deaths of both Ka B and U A. Children must not divide ancestral or self-acquired property of their father on his death for the reason that the mother, the receiver (nongdiangti) from the father, must get her maintenance jointly with the children from the property of the father. Similarly the father, the taker ("shimti"—to take with the idea of being responsible for) with the mother, must get his maintenance jointly from the ancestral and the self-acquired property of the mother, which latter he has helped to build. Therefore children must not divide the ancestral and self-acquired property of the father on his death or of the mother on her death. But if the father marries again after the mother's death, the children can divide the ancestral property of the mother and the self-acquired property of the father and mother. Similarly, if the father dies and the mother marries again, the ancestral property of the father and the self-acquired property of the father and mother may be divided. If Ka B marries again, she retains her own ancestral property in her control; so does U A if he marries again after Ka B's death. On U A's death, Ka B gets in her control the ancestral and self-acquired property of U A. It can not be divided among the children until after the death of Ka B, unless Ka B marries again.

The mother and father are the mutual trustees (ki trai nong pynbat markylliang) of each other's ancestral property, the father

for the mother's and the mother for the father's, so long as they continue to live together.

So also they are the founders and builders of self-acquired property for themselves and on behalf of their children.

The children cannot eject U A after the death of Ka B if he stays with them and takes care of them; if he lives with Ka F, they cannot turn him out.

The reason for the law is given in the following translation of the words of U Jugidhon Wahadadar:—

"Groves, lime quarries, money, or any other property, are in the first instance in the mother if the father dies, and similarly they are in the first instance in the father if the mother dies. The children have no right to demand division immediately after the father's death or immediately after the mother's death The mother takes the shares or the rights or groves or wealth or any property of the father on behalf of the children. Similarly, the father takes the rights, the groves and lands, wealth or any property of the mother on behalf of the children. An example will illustrate the meaning. U A takes Ka B to be his wife, in order to help him to be comfortable and happy. Ka B, similarly, receives U A to be her husband in order that she may be comfortable and happy. Ka C, Ka D, U E and Ka F are the fruits of the mutual happiness of U A and Ka B. Side by side they work and labour and seek to earn and to save and store and join their ancestral as well as their self-acquired property of both sides for the help, comfort and happiness of both and also for the comfort and happiness of the children in the means of livelihood, clothes and ornaments and other needs for their welfare.

"Therefore it is not compatible with reason or right for the children to divide the ancestral and self-acquired property of U A on his death, or of the ancestral or self-acquired property of Ka B on her death; because U A when he took Ka B, desired to get help and happiness from Ka B, similarly Ka B when she received U A desired to get help from U A to be comfortable.

On the other hand, the children can divide any ancestral or self-acquired groves of U A or Ka B, if U A, who survives Ka B, or Ka B who survives U A, permits the division to be made in order to give work and means of income to the children individually, when the children are grown up and are able to work.

And they also can divide the ancestral and self-acquired rights of U A after the death of U A, when Ka B marries again. Similarly,

if Ka B dies, they can divide the ancestral rights of Ka B and the self-acquired rights of Ka B and U A when U A marries again. (The ancestral rights of U A or Ka B remain in him or her who survives and remarries.)"

EXAMPLES OF INHERITANCE.

The following examples are given with answers by U Jugidhon Wahadadar:—

(1) U A carried on a limestone business after his marriage to Ka B. He purchased a quarry and saved money from his business. Ka B did not assist him in the business, but stayed at home and kept the house. U A died.

Answer.—The quarry and money are considered to be the joint property of U A and Ka B. It does not matter that U A actually carried on the business while Ka B remained at home. Ka B takes after his death and the children take on her death. She takes on her own behalf and on behalf of the children.

(2) U A purchased a limestone quarry before he married Ka B and he acquired money from limestone business before he married Ka B.

Answer.—The wife is not an heir or a joint heir to this quarry or money. The children are the heirs in the same manner as if it had been the ancestral property of the father.

(3) U A purchased a limestone quarry before he married Ka B and he saved money from the limestone business after he married Ka B.

Answer.—The children are the heirs of the quarry and the wife and children together are the heirs of the money. The wife takes the money on her own behalf and ultimately on behalf of the children.

(4) U A purchased a limestone quarry before he married Ka B. U A dies and the quarry is sold.

Answer.—The price is to be paid to the children, if they are not minors, with consent of Ka B. If Ka B objects, the price is to be paid to Ka B and she must settle with her children. If there be minors among the children, the quarry cannot be sold unless to pay the debts of U A or unless the children cannot be

maintained otherwise. In that case, the consent of the kurs of U A is necessary and the price is paid to Ka B.

(5) U A purchased a quarry after he married Ka B. He dies. Ka B wishes to sell.

Answer.—If the children be majors, the consent of all of them is necessary. If the children or some of them be minors, Ka B can sell half, without their consent. Ka B gets the price.

(6) In case (5), Ka B marries again after the death of U A.

Answer.—Ka B cannot sell the quarry. The children are the owners. If the quarry be sold, the children get the price.

KHUNDIR KHUNTI.

The same as in the Mawlong customs given below.

DIVISION OF PROPERTY DURING LIFETIME.

Division, by special custom, is made in the same way as the property would be shared on death.

SENG LAND.

A seng is a collection of families descended from a common ancestress or ancestor. Every person in the family has a right to cultivate the seng land. If a person has groves in the seng land, the children inherit equal shares in the groves, but they do not take fixed shares in the remainder of the seng land. They have only a right to cultivate. Children have the right to cultivate in the seng land of the family of their father as well as in the seng land of the family of their mother. There is a seng durbar which manages the land and allots shares and decides disputes. Children inherit what is planted (u liar) by their parents. If there are no children the nearest relatives inherit what is planted.

II.—CUSTOMS OF MAWLONG STATE.

The customs, as agreed upon in a durbar, are thus reported by the Sirdars:

SUCCESSION TO THE DWELLING HOUSE OF THE MOTHER.

(i) If brothers only, the youngest brother.
(ii) If sisters only, the youngest sister.
(iii) If brothers and sisters, the youngest of the sisters.

DEFINITIONS.

Apot. This word especially denotes expenses in time of difficulties, illness or death and the expenses of religious ceremonies for the parents. Unless otherwise agreed the Apot for the parents is borne and must be borne by their children.

Ka kamai means the labours of a person, man or woman for his or her livelihood and that of their children.

(i) *Ka Nongkhynraw.* (ii) *Ka Nongtymmen.*

(i) There are two classes of Nongkhynraw (self-acquired) property):

(a) The earnings from the labours of the husband and the wife at the time when they lived together.

(b) The earnings of the man or the woman at the time they were not married.

(ii) Ka kamai nongtymmen means the earnings from the labours of the parents or grandparents (ancestral property).

Ka hok means what a person possesses or has by right to possess unto himself. For example, ka hok of a person in ri kynti (land held in private ownership) or his share in the ri-seng.

INHERITANCE OF PROPERTY.

Unless there be special reason, property is divided as follows:—

1. All children, males and females, share inheritance equally in the Hok or Kamai of the parents (mother and father) whether inherited or their own and so from generation to generation of the children.

Although children have a right to inherit land and groves of the parents on the death of the parents, they have no right in them during the lifetime of the parents.

2. Ka kamai of childless persons. The hok and the kamai of a couple without children after their death are divided equally amongst the relatives of the man and the relatives of the woman. If the childless couple separate, they each take an equal share.

(a) Lands and groves obtained from the family of the mother and the family of the father of the man will be received by the relatives of the man, and those from the house of the mother and the house of the father of the woman will be received by the relatives of the woman.

(b) Plants grown in the groves which were of the parents of the man or the woman are divided equally amongst the relatives of the man and woman.

(c) The kamai which is in the name of the man or the woman at the time when they lived together as man and wife is regarded as the kamai of the couple as man and wife together and it is divided equally amongst the relatives of the man and the woman. (This is also the custom amongst the Khasis.)

Among Khasi highland families, settled in Mawlong but still retaining some of the highland customs, daughters only and not sons share in the hok or kamai of the mother whether inherited or self acquired, sons have only the right of management in the property so long as they live. All, sons and daughters, get equal shares in the hok or kamai of the father.

3. Khundir Khunti.—A man or woman who has previously married calls the children from the second husband or the second wife, Khundir, and the children from the first wife, Khunti.

As regards the hok and the kamai of the man or the woman who had previously married and had children, the kamai earned at the time when he or she lived together with the first husband or wife is given to the Khunti, and that with the second husband or wife is given to the Khundir. The kamai nongtymmen is divided among the Khundir and Khunti, and the kamai of the man and the woman before they were married is regarded as the nongtymmen.

The house of the parents (mother and father) is given to the youngest of the daughters even if she is not the youngest child. Failing daughters, the youngest of the sons takes it.

Among those who follow Khasi custom (as distinguished from War), in the case of a woman without daughters, the kamai or hok which she inherited from her mother will be received by her female relatives who have got daughters, her own kamai or hok though she may not have daughters will be received by her own sons.

4. The kamai of the people who are " War " when they marry with Khasis:—

(a) If the woman is a War and the man is a Khasi the custom will be according to the law of customs which binds the woman if she has children, but if she has no children their kamai is divided half and half between the man and the woman.

(b) If the man is a War and the woman is a Khasi the custom will be according to the law of customs which binds the woman if she has children, if she has no children it will be as in (a) above.

III.—OTHER VILLAGES IN THE WAR COUNTRY.

The customs of Khasi War villages such as Umniuh and Nongjri, Mawthangsohkhyllung and Sohbar resemble those of Shella. Not all people who live in the War country observe War customs. The War people came from the highlands and some families preserve the highland customs. The main test is whether they keep their clan (jaid) name. The Wars have no jaid.

Any special custom, such as keeping bones in a basket, is a useful test in the difficult cases when retention of highland custom is asserted and denied in inheritance cases. The people of the Saw-Raid in Khyrim State, although sometimes called Wars, as dwelling in the low valleys, keep the highland customs. But Nongshken village has War customs.

IV.—INHERITANCE AMONG SYNTENG (PNAR) WARS.

The rights of males to inherit, found among the Khasi Wars, does not exist. Ka khadduh gets a share twice as much as that of the other daughters, the additional share being given because she is the family priestess, the eldest daughter gets one and a half times as much as the others, in return for her help in rearing the children. The other daughters take equally. Ka khadduh has the right of first selection of her shares from the landed property.

This appears to be the only difference between the War Synteng custom and that of the Synteng of the uplands. The order of succession is the same as among other Syntengs.

Ancestral property cannot be alienated without consent of all the family. Males are not entitled to any share in ancestral property.

Males, however, actually manage the property to a great extent just as Khasi and Synteng males in the uplands. The males continue to live with their mother or kurs after marriage in the same way as highland Syntengs.

SELF ACQUIRED PROPERTY (SYNTENG WARS).

Inheritance by children is by division in the same way as ancestral property.

Inheritance of the self acquired property of an unmarried man is by his mother or kurs.

Inheritance of his self acquired property after marriage is subject to the same considerations as in the Synteng uplands, vide Chapter VI.

GIFTS.

The custom of gifts among the Wars including division of property among heirs in the lifetime of the owner is described in Chapter IX.

CHAPTER VIII.

INHERITANCE AMONG CHRISTIANS.

The Indian Succession Act, X of 1865, does not apply to Khasis or Syntengs, vide Government of India Home Department Notification No. 1671 of 20th October, 1887.

Christians follow the same rules of inheritance as non-Christians.

Exception.—In Jowai Sub-division among Synteng Christians, paragraph 2 of Government letter No. 9708-J of 10th December, 1918, allowed the Courts to make for Christians a new rule of inheritance to self-acquired property of a male. This has been fully discussed in Chapter VI. The reason, however, was a difference in mode of life and not a difference in religion.

The Freedom of Religion Act, XXI of 1850 is in force in the British portions of the Khasi and Jaintia Hills.

It lays down that "so much of any law or usage now in force within the territories subject to the Government of the East Indian Company as inflicts on any person forfeiture of rights or property or may be held in any way to impair or affect any right of inheritance by reason of his or her renouncing, or having been excluded from the communion of any religion or being deprived of caste, shall cease to be enforced as law in the Courts of the East India Company, and in the Courts established by Royal Charter within the said territories."

At the advent of Christianity in the Hills, a convert was considered as "sang" (taboo) and lost all claim to property. There was no inheritance of Christians to non-Christians and vice-versa.

In suit No. 41 of 1883 (a Synteng case) Colonel Clarke, Deputy Commissioner, said:—"There is evidence to show that conversion to Christianity separates a man from his kith and kin. He is outcasted; he succeeds to no property from his relatives; property that he would be entitled to goes to his next of kin."

This hostility ceased and Christians were allowed by social custom to inherit from non-Christians.

It is now settled law that Christians can inherit from non-Christians. But the succession of a non-Christian female to the iing-khadduh and to the special rights and obligations of that position raises difficulties, which must be discussed.

SUCCESSION OF A CHRISTIAN KHADDUH.

In the enquiries and discussions of 1916-18 mentioned in Chapter VI about succession of a Synteng Christian wife and children to self-acquired property of the husband, the question of succession of a Christian female to the iing-khadduh and management of the ancestral property was raised.

The Deputy Commissioner, Mr. Dentith, reported:—

"The question of the inheritance of ancestral property was not raised by the memorialists but has been raised by Mr. Williams alone. Mr. Shadwell informed the Conference held at Jowai on 14th December 1916 that so far as he was aware ancestral property descended to whoever was the heir according to Synteng custom irrespective of whether this person was a Christian or not. Mr. Williams then stated that he considered the prevailing custom to be just and equitable and asked for a formal declaration that this was the acknowledged custom.

His contention is that if she were on account of her religion deprived of property to which she were justly entitled according to custom it would be persecution. He accordingly demands that the "present custom" be ratified and that no reversion to an old, obsolete, worse, and inequitable custom be permitted.

Mr. Williams' proposal is, of course, clear-cut and simple, but the question at issue is unfortunately very much the reverse. What then is this old custom which is condemned so wholeheartedly by Mr. Williams? The answer is given by Mr. Williams himself and the other memorialists in paragraph 9 of their memorial. "According to the heathen Synteng custom of inheritance the youngest daughter because she has charge of the family idols, is also supposed to receive all the property of the family upon the death of her mother." It is thus clear that the youngest daughter inherits all the family property because she is the family priestess and because it is she whose duty it is to perform the family ceremonies and propitiate the family ancestors.

And herein lies the great objection (and I think the insuperable objection) to Mr. Williams' proposal. In the Shella Confederacy where the custom is for the family property to be divided equally amongst the sons and daughters the youngest daughter in addition to her own share receives an additional share to enable her to defray the cost of maintaining the family pujas (niam); if this custom obtain among the Syntengs the solution of this question would be simple, for if the youngest daughter became a convert to Christianity she would obviously retain her own personal share of the family property but would give up the additional share which devolved on her in her capacity as family priestess.

Now in the Khasi Hills this problem has not been decided in the Courts as the youngest daughter, if she becomes a Christian convert, comes to some amicable arrangement with her non-Christian relatives. So, too, Mr. Shadwell reports that in the Jaintia Hills during his tenure of office "no case has ever arisen in which non-Christian kurs have disputed the right of direct heirship to the property of the house on the ground of the youngest daughter (the heir) changing her religion for Christianity," and he is inclined to believe that the old custom has of late years "undergone an evolution which most probably is due to the fact that the present generation are not aware of what the old customs were and apparently are under the impression that a change of religion does not affect the right of heirship." Mr. Williams' explanation is that there is not the same antagonism to Christianity that there was seventy years ago. Now there is, of course, no reason why we should be more Synteng than the Syntengs and if the non-Christian Syntengs of the present day are content to acquiesce in the youngest daughter retaining the ancestral property when she becomes a convert to Christianity Government interference is obviously uncalled for. But supposing Government were to accept Mr. Williams' proposal and solemnly declare that ancestral property should invariably descend to whoever was the heir irrespective of whether this person was a Christian or not, and supposing the non-Christians formally challenged this declaration on the ground that it was inequitable and illegal, what then? If I were then called on to report on the non-Christians' objections I should be bound to report that the old custom so far from being inequitable (as contended by Mr. Williams) is just the reverse and that if the ancestral property which were the subject matter of any case were inextricably con-

nected with heathen rites and ceremonies (as it would be in nine cases out of ten, the burden of proof that it was not so connected resting of course on the Christian claimant) then it could not be inherited by the convert but would be vested in the person who would look after the non-Christian rites and ceremonies in her stead. I accordingly am in complete agreement with Mr. Shadwell when he reports that "The non-Christians have every justification for not allowing a Christian to inherit ancestral property. The youngest daughter, who inherits this property, inherits it under an obligation, and this obligation is that she must look after the family idols and bear all puja expenses of the family out of her own pocket. It is, therefore, only fair that if the youngest daughter cannot fulfil these obligations, by reason of her embracing the Christian faith, some one else who takes up these duties should come in for the ancestral property as a remuneration." In fact, to quote Colonel Gurdon's Monograph at page 83: "in the event of the youngest daughter changing her religion she loses her position in the family and is succeeded by her next youngest sister as in the case of a death." In these circumstances I am unable to agree with Mr. Williams that the custom whereby a non-Christian Synteng woman was disinherited if she became a Christian is "manifestly unfair."

On Mr. Williams' own showing, converts in recent times have always been allowed to retain their ancestral property. Legislation is therefore uncalled for: let time settle the question whether a convert should be able to retain ancestral property, and if the old custom dies out the Syntengs will have worked out their own salvation. Meanwhile I venture to submit that the correct and proper policy of the British Government is 'quieta non movere,' and to leave the question of ancestral property alone."

The Commissioner Surma Valley and Hill Division on receipt of this report wrote to Government letter 7192 of 21:9:18:—

"It appears that no difference is in practice made between Christian and non-Christian heirs, but clearly if the inherited property carries with it the duty of performing religious ceremonies, of spending money on such ceremonies which a Christian could not conscientiously undertake, an heir who has adopted that faith could in justice inherit only on the condition of arranging to have the ceremonies duly performed or the necessary payments made. Cases which arose would turn entirely on questions of fact."

Government replied in letter 9708-J of 10:12:18:—

"In the case of ancestral property, you agree with the Deputy Commissioner in thinking that there is no reason why the existing custom should not continue. It is obviously unnecessary and undesirable to change the ordinary law of inheritance, but apparently under Synteng custom inheritance is conditional on the performance of certain religious ceremonies duly performed. It appears, however, to be admitted that in recent times converts to Christianity have been permitted to inherit ancestral property, and the Chief Commissioner is advised that this is strictly correct, for, whatever may have been the old Synteng custom, Act XXI of 1850, which is in force in the Khasi and Jaintia Hills, would not allow British courts to enforce a custom which would exclude any person from inheritance merely by reason of his or her change of religion.

If the property to be inherited is not the sole and absolute property of the holder, but is subject to an obligation to perform certain acts, probably, as you suggest, the heir would be bound to make necessary provision for the due performance of such acts. It would be for the Courts in each case to decide what these obligations are, and whether suitable provision had been made to discharge them."

The first part of the letter of Government lays down that nobody, including ka khadduh, can be deprived of a share of the family property: Act XXI of 1850 prevents such deprivation. This is no longer attempted among Khasis and Syntengs. Ka khadduh can get her ordinary right of occupancy of a share of family land: it is her power of management of all the property that has been questioned. The Hindu law is that degradation from caste or a departure from orthodoxy in the matter of diet or ceremonial observance does not prevent the application of Hindu law. Except so far as the Hindu law may be inconsistent with the new religion adopted by persons who have renounced the Hindu religion, such law continues generally applicable to such persons, if they do not elect to abandon their subjection to Hindu law. (Trevelyan's "Hindu Law," 2nd edition, page 28.) Change of religion or loss of caste for any reason does not per se exclude from inheritance (page 374).

The letter of Government would apply to cases where due performance is found possible. For example, in a family consisting largely of Christians, the majority might wish a Christian khadduh to manage the property; ceremonies for the non-Christians would be

performed by some female chosen among themselves as ka khadduh. She would probably demand a larger share in the property in return. A Court might give effect to an arrangement of this kind.

But when non-Christian members form a majority, the possibility of performance of ceremonies by such arrangement would be very remote. The non-Christian female chosen by the family would demand the whole right and position of ka khadduh before she would consent to act. It is submitted that in such a case, the Christian khadduh would not be able to arrange for performance of the ceremonies within the terms of the Government letter and that her claim would fail.

Among the Nairs of Malabar, whose property descends through females, a male is the manager (karnavam). Sundara Aiyar in his book on Malabar Law says that it is out of the question that a person who has lost his caste by change of religion should occupy the position of karnavam and discharge the secular and religious duties appertaining to that position.

In the case of Muthoora alias Pathumma v. Muthoora, I.L.R. 44 Madras 891, heard by a Full Bench, the Chief Justice declined to give any opinion on this point, as it was not necessary for the case.

There has been one Khasi case since 1918, Civil (Pol.) Appeal No. 7 of 1926.

It is to be noted that this was an appeal from the State of Khyrim, to which Act XXI of 1850 has not been extended.

The facts were that the youngest daughter had cremated her mother and succeeded to the largest share of the property. She then became a Christian. The Courts of the State took away from her the iing-khadduh and deprived her of much of the property, leaving her an ample share.

Held by the Deputy Commissioner that the Khyrim Courts had decided correctly.

There was no further appeal, although the decision was not acceptable to some leaders of the Christian community.

The topic awaits development by the Courts. It may be said that if the Courts decide against the claims of a Christian khadduh, then (1) if there was no distribution of the property by the mother in her lifetime, the non-Christian would oust the Christian as priestess and manager. The Christian would have the right of cultivation of a share of the family land. (2) If it were a War case in which a defined portion called ri-shieng were allotted to ka khadduh for ceremonies

in memory of the female ancestress (ka kiaw), the non-Christians would oust the Christian from this ri-shieng land only. (3) If, as was alleged by the Christian party in the Khyrim case, the mother had divided the property before her death, giving the larger share to ka khadduh, who afterwards embraced Christianity, redistribution, as was done in the Khyrim case, might or might not be made. The matter is uncertain. (4) If the mother gave a larger share in her lifetime to ka khadduh who was at the time a Christian, it is submitted that no redistribution is possible. A mother can distribute shares as she pleases, although she cannot disinherit a daughter entirely save for special reasons. It cannot be said what will be the future development.

If there be only a few Christians in a family, there may not be general complaint if the Courts decide that ka khadduh cannot take apart from the old religious basis, but if there be many Christians and especially if there be a majority of Christians in a family, deprivation of the position of ka khadduh might give rise to a general protest from the Christian community.

It may be thought that right to partition is a fair remedy. Sundara Aiyar in his "Malabar Law" argues that a person changing religion should cease to be a joint owner under the special Marumakkathayam law and should become an ordinary tenant in common along with the other members, and tenants in common have always a right to partition. He argues against the Full Bench decision in Pathumma v. Muthoora, I.L.R. 44, Madras 891, by which, because there was no custom of partition under that law, a convert to Christianity was refused a right to partition.

Now if Christian Khasis are granted a right to partition in a family composed of non-Christians and Christians, because Christians are not under the old custom, it seems that Christians must also have this right in a family composed wholly of Christians. So among Christians there will always be a right to partition.

The argument that a change of religion dissolves a coparcenery may have force to the mind of a non-Khasi but the great obstacle to a Khasi is the religious basis of the holding of property. Ka khadduh takes as a representative owner because she maintains the religion of the family and a right to partition would be considered as a right to break not only the property but the religious principle on which the property is held. It is true that partition is made by an absolute owner among her children or by a family or clan council in

the case of family or clan property, but such partitions (save in the War country) are not made necessarily into equal shares. No Khasi Durbar will change a division of family or clan property jointly held, if the division has been made in good faith by the family council, simply for the reason that the Durbar considers that it could make a make a more equitable division.

By old custom, any objector runs the risk of forfeiting her or his right by ai kawduh (driving out with a handful of rice; in English phrase, cutting off with a shilling). Enforcement by the Court of a rule of right to partition would introduce a new principle of a right to equal shares.

A Khasi would argue that if the Khasi Christian community wish to create a new rule for property held by families wholly Christian, inasmuch as the old religious basis no longer exists among them, they are free to take steps to that end, but they should not interfere with the basis on which non-Christian property is held. He would argue also that the mistaken notion that ka khadduh has the power of a sole heir in other systems of law creates a false appearance of hardship to Christians. She is actually only a representative owner, the family council being the important ruling body, securing their rights in property to every member.

The division of property by the mother and the good sense and religious toleration of the Khasis are reasons for the rarity of cases in the Courts. The matter is bound to come up for decision some day.

SPECIAL RIGHTS OF THE WIFE AND CHILDREN AMONG CHRISTIAN SYNTENGS.

The instructions of Government contained in letter 9708 J of the 10th December 1918 have been set forth in Chapter VI.

CHAPTER IX.

WILLS AND GIFTS.

THERE is no power to make a will. A desire exists, especially among educated males, for a change in the law and a request was made in 1916-18 in the Jaintia Hills during the enquiry into customs of inheritance, mentioned in Chapter VI. The request was that self-

acquired property only be disposable by will. The following reasons against wills were given in 1918 by Mr. Dentith, then Deputy Commissioner.

" 4. It is clear that the final proposal, that Syntengs should be given the power to make wills, is an extremely popular proposal. The Conference noted that ' it is this testamentary power which the memorialists are most anxious to secure ' while Mr Shadwell, Sub-Divisional Officer, reports that ' even the majority of the non-Christians are in favour of the introduction of a will ' and has accordingly ' no hesitation in recommending that power may be given to the people of the Jaintia Hills, both Christians and non-Christians, to make wills ' provided such wills be restricted to self-acquired property only. But to confer testamentary power merely because everybody wants to possess such power would be democracy run mad. Now in paragraph 9 of their memorial the memorialists state that ' Christian parents should be allowed the legal privilege of making a will of their property so as to properly provide for all their children ' and it would appear that they are not in favour of the old custom whereby all the family property is concentrated in the youngest daughter but wish to divide their property after their death among their children by means of a will. But Mr. Williams (Missionary of the Welsh Presbyterian Church) anyhow, has changed his views because he has recorded a definite statement that ' the Synteng Christians do not wish to change this custom whereby the youngest daughter is heiress to all family property. The proposal is that this custom shall become the law of inheritance for all Syntengs with this proviso that changes of religion shall not disinherit anyone.' And in the course of recent conversations with Mr. Williams, I gathered that he looked upon the proposed testamentary power as an alternative remedy in case the non-Christians were still to be allowed to " beh-khih " self-acquired property. In Paragraph 2 supra, however, I have recommended that this power to " beh-khih " be abolished and as the proposal to grant testamentary power is obviously highly revolutionary it is, I think, essential that its essense and its probable results should be carefully considered before the Government accede to the wishes of the Synteng democracy. Now at the present moment the Synteng husband is a mere shadow in his own house and is dependent on his women folk, but if he were given testamentary powers he would thereby become a veritable rangbah and master in his own house and be freed from the fetters

either of his wife or of his kur, as he could leave his property to whomsoever he wanted, so it is no wonder that the ordinary Synteng husband is anxious to obtain testamentary powers and thereby become independent of the law of succession. But it is certain that the ordinary Synteng wife will object to this proposal because if it were given effect to she would be nowhere, whereas hitherto, as Sir Charles Lyall has pointed out at Page XXIII of his Introduction to Colonel Gurdon's Monograph on the Khasis, she is " the only owner of real property." Now amongst the Khasis, who have always been more advanced than the Syntengs, the power to make wills has never been recognised, while even in the up-to-date Shella Confederacy where the man always carries with him his portion of the ancestral property he cannot even sell this ancestral property and thereby deprive his children of their rights unless he can prove to the satisfaction of the Durbar that his children do not maintain him. And, unfortunately, the good old days have departed and in this transitional period the ordinary Khasi or Synteng is not so anxious as formerly to come to the aid of his poor relations. But if testamentary powers were conferred things might easily become worse, and unless the ordinary Synteng were endowed with sound judgment he would obviously not exercise such far-reaching powers for the good of his dependents, and the village community would thereby become out of joint. Of course it may be argued that as the Syntengs have already the power to make deeds of gift of self-acquired property to any amount during their lifetime and that as a will is nothing more than a death-bed deed of gift it is only one step in advance to confer the testamentary power. But as a matter of fact the Syntengs seldom avail themselves of their right to make deeds of gift for if they did they would be more or less at the mercy of their children or their kurs. In fact, as Mr. Williams practically admits, only those who do not " wish to abide by the old custom " but are anxious to leave their self-acquired property out of the course sanctioned by custom would avail themselves of this proposed testamentary power. But before such iconoclasts can be permitted to over-ride custom in this revolutionary manner they must be able to walk before they are allowed to run: yet at the present moment though they strictly speaking do not hold even their self-acquired property in fee simple—for it is now liable to beh-khih unless my recommendation in para. 2 supra be accepted by Government—they want to will it away. Were testamentary powers conferred on

Syntengs the average man, who has hitherto never had a knife in his hand, would then be given a flaming sword and would very probably run riot in consequence. (The majority of the Christians even are illiterate so the man who wanted to make his will would be at the mercy of the nearest tout.) Of course a few educated individuals here and there would have sufficient judgment to be entrusted with such a far-reaching power but in my considered opinion this testamentary power should not be given to the Synteng community for at least another generation to come: meanwhile Government must safeguard the interests either of the wife and children or of the kur as the case may be."

The Government of Assam in letter 9708-J of 1918 issued on this report, refused, in the following words, to allow wills. "The Chief Commissioner agrees with you and the Deputy Commissioner that it is not necessary at present to give to the Syntengs or any section of them a power to dispose of property by will, which they do not enjoy already."

GIFT BY WAY OF DISTRIBUTION AMONG HEIRS.

The necessity for settlement of shares, both in ancestral and acquired property, among children in order to prevent disputes, has provided substitutes for wills :—

(1) The division of property by the parent in his or her lifetime;

(2) Information to the children given by the parent of the share which the parent wishes them to get after his or her death. Nowadays this may even be by a written document, although it has only a moral and not a legal effect. The parents or grand-parents always express their wishes when they do not divide their property in their lifetime. The children and family members should respect these wishes if equitable and they are considered by society to have failed in their moral duty if they refuse to carry them out. Any child, not being ka khadduh, who refused, must expect that the other children and kurs would strike back by allotting for her occupation as little as possible of the joint family land. There is no right to demand partition. The youngest sister, with the advice of the experienced male members, can, if she wishes, divide the property after death of the mother, giving

separate shares to her sisters which they then hold in full control. This is an absolute partition as distinct from a mere allotment of land for occupation.

She could not give to any sister or kur a share less than that which they actually cultivate.

ADVANTAGES AND DIFFICULTIES OF WILLS DIVIDING PROPERTY AMONG HEIRS.

(1) Testamentary power limited to a mere division of self-acquired property among children would have certain advantages while making little or no change in the present social system (except among Wars).

(2) In the case of a husband, such a power limited to distribution between wife and children and kurs would put an end to the uncertainty which sometimes arises, owing to conflicting claims of wife and kurs, and, among the Syntengs in Jaintia, of wife and children and kurs, but important difficulties are set forth in Chapter III under the heading of ' Self-acquired Property of a Male ' and again in paragraph 15 of Chapter XI. The point in dispute would be whether the testator had actually the power to dispose of certain property by will, and Khasi law in its present stage would not always supply an answer.

There is much in Khasi custom that is intended to be decided by the family of kurs as a whole or by the husband and wife together. In cases where there is large property left by a man, a will would solve more difficulties than it would create. But much litigation of a most difficult kind would ensue if the practice of making wills became general and employed where property was small and very hard to distinguish from joint earnings of husband or wife, or if the earnings had been brought to the wife's house and every indication had been given for many years that it was to be for wife and children, but a discovery was made by the will that this had not been after all the intention.

One grievance felt by certain educated men is the taking of the whole property by ka khadduh. True she is only a custodian but nevertheless she has considerable power, especially if an uncle of position in the family supports her.

A desire to settle the respective claims of wife and kurs is also felt.

In former days there was not much property save land and a male would rarely have much self-acquired property, but nowadays he may be educated and have a profession or business. These men form the class which most desire testamentary power.

Among the Nairs in Malabar, where property descends through females, there used to be doubt about the power of disposing of property by will when there were heirs, but by the Malabar Wills Act V. of 1898, a person can now dispose by will of such property as he can legally alienate by gift when living, that is to say self-acquired property.

GIFTS.

A. AMONG KHASIS AND SYNTENGS.

1. Gifts of ancestral property away from the heirs cannot be made without consent of the heirs.
2. Gifts of self-acquired property can be made by the acquirer in his or her life-time without consent of the heirs. (It is said that an unmarried man cannot make a gift of property acquired by him while living with his mother in her house).

This rule is ancient custom, but before considering specific exceptions, the state of the society in which this rule existed must be understood. The family was held together by religion. The bones were placed, with religious ceremonies, beneath the burial stone of the clan by children or kurs. If persons, in order to spite their kurs and children, gave away all their property to strangers, they could not expect any one of the kith and kin to care for their bones. The most dreaded fate is the lack of proper burial of the bones. If a person dies in a far land, a ceremony is performed to take the place of the normal rites.

A woman who has ancestral property to be inherited by daughter or kurs might make a gift of self-acquired property away from the heirs, being secure in her mind that her heir would care for her bones because of the ancestral property taken. But a man, who would only in rare cases have ancestral property, would not, to spite his kurs or wife and children, give his property to strangers, owing to the risk of his bones being left uncared for. Among Christians, anxiety for the bones does not exist, as they do not

cremate bodies and place bones under the clan stone; so the restraint of religion upon gifts outside the family has disappeared among them.

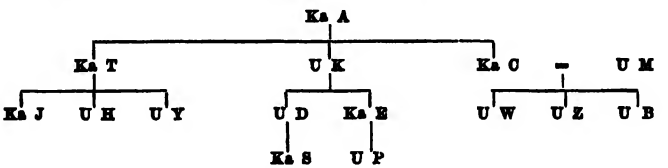
B. AMONG THE KHASI WARS.

In the Khasi War States, a gift away from the heirs without their consent is against custom. The point arose in Civil Pol. Appeal 7 of 1932 from the State of Mawlong. The facts were that Ka Sajiar had had a brother U Sno who had a son U Kwing. Ka Sajiar had no child and took a distant relation, Ka Phroi, to look after her and to cremate her bones after death. She made a gift to Ka Phroi of all her property, it being self-acquired. U Kwing objected.

Held by the Sirdars of Mawlong that Ka Sajiar could sell her self-acquired property when in need of money, but could not make a gift away from her heir, U Sno, who would take any of the property left after the expenses of the cremation had been met.

The decision was upheld by the Deputy Commissioner as it was the custom of a semi-independent State. During the case an enquiry was made in the War country.

The Wahadadars of Shella Confederacy reported that a gift of self-acquired property away from heirs could not be made if heirs object. The heirs (Ki Waris) include both relatives through females (Ki Kur) and relatives through males (Ki Kha), however near or far.



All in the table are heirs (Ki Waris) although some have connection through males and some through females. U Jugidhon Wahadadar of Shella gives the reason for the rule in the following words:

" The reason why the Shella or War people do not like to gift or to will away outside their own heirs (waris) is because they reckon it an act of " byrtep " (to bury or extinguish) or " byrsih " (to become foul or defile). The essence of the Khasi religion is the consciousness of the existence of one's relative position to the " Kurs " and the " Khas " and the knowledge of the true and the

virtuous. To gift or will away one's own wealth, groves or lands to persons other than the " Kurs " or " Khas " is the burying (tep) and the fouling (byrsih) of one's own " Kurs " and " Khas " and the ignoring (lyndet) of the true (hok) and the virtuous (sot) as ordained by God. Therefore we say it is " Sang " (sah-ang, sah, to remain and ang, to gape, remaining gaping that which cannot be filled up, that which cannot be reconciled before the justice of God)."

The Sirdar of Nongkroh (British) replied that a gift of self-acquired property could not be made without consent of the heirs. The Sirdar of Tyrna (British) reported that it was not custom to make such a gift so as to deprive the heir.

The Sirdar of Mawthangsohkhyllung (British) reported that a gift of self-acquired property away from the heirs could not be made without good cause. Such a gift could be made to a friend who has done good service or who has helped in time of need.

The Sirdar of Sohbar (British) has stated that it is against custom in Sohbar. Among Syntong Wars, whose customs differ greatly from Khasi Wars, it is reported that gifts of self-acquired property can be made away from heirs only if the heirs have no reasonable objection; but it is unknown if they consider this custom as binding.

The reason for the special dislike of the Khasi Wars for gifts away from the family is given in paragraph 18 of Chapter XI. All property is regarded as the result of joint earnings, because in most cases it really is so.

There have been two decisions allowing gifts.

The first was the Sohbar case, D.C.'s Case No. 75 of 1928. The facts were as follows:—

Ka Bat had three sons who died, leaving each a daughter. Ka Bat wished to make a gift of some property to the daughter of the youngest son, through natural affection, because this daughter had looked after her in her old age.

The other daughters contended that such a gift was unprecedented in Sohbar even if it were self-acquired property and that the documents of gift were really wills, one containing instructions about cremation after death. The Sirdar of Sohbar reported that there had been no such case before and asked for instructions but after being directed to hold an enquiry with the village Matebors, found the property was self-acquired and reported in favour of the deeds. Rai Bahadur Dohory Ropmay, a Magistrate of great

experience and himself a War man of Shella, noted that as the document was to take effect during the life-time of Ka Bat, it was a deed of gift of self-acquired property and that parents frequently exercise this right in the case of their elder daughters who leave the parental roof and build houses of their own. The Deputy Commissioner upheld the documents.

It is to be noted that:—

(1) Ka Bat in her petition stated that the gifts were made from natural love and affection, as this grand-daughter had looked after her. Rai Bahadur Dohory Ropmay made special mention of this point. It has been ascertained from the Sirdar that this was the sole reason for his report in favour of the deeds.

(2) The gift was not made away from all the heirs but to one heir.

(3) Subsequent enquiry from the Sirdar has elicited the fact that Ka Bat had other land in which the other two grand-daughters could take shares if they so wished.

The decision cannot, therefore, be taken as authority that a gift of self-acquired property among Khasi Wars can be made away from all the heirs without good reason.

The second case was Ka Jointi Pohkyntien v. Ka Riang Pohkytien, D.C.'s Civil Case No. 16 of 1932, Commissioner's Appeal Case No. 12 of 1932.

The facts were as follows:—

The wife and husband were Syntengs of non-Christian families. The home of the wife's family was in Amwi, a War Synteng Doloiship. The wife and husband left the Synteng country fifty years before and went to Shillong where they became Christians and grew wealthy by joint trading. A daughter and a son were born. The daughter died. The son married but brought his wife to his mother's house and worked with his parents in their business. The father died. The son worked with his mother and died. The mother, an aged lady, made a gift of all her property to the widow of her son, because she lived with and cared for her. The nearest female relative of the mother sought to set aside the gift.

The principal argument of the plaintiff was that such a gift was not legal in the War country.

The War Synteng customs were unknown at the time of trial. It has been ascertained that they differ greatly from those of the Khasi Wars. It is reported that gifts of self-acquired property

should not be made by Synteng Wars away from heirs without their consent, but whether the people consider this custom as binding is unknown.

The case was one of complete severance, both social and religious, from the kurs as the old lady had not taken part in family affairs since leaving her home; the gift was allowed by the Court.

Some other arguments of interest were put forward in the case.

(1) The plaintiff contended that the mother could not gift the share of her son, because she had inherited this share on the death of her son and by this inheritance the property became ancestral.

It was held that the earnings of a son living in his mother's house do not become ancestral property when taken by his mother on his death and in this case, where the son had worked in his mother's business, there was no share that could be reckoned as separate from the property of his mother.

(2) The plaintiff argued that the mother could not gift the share of her dead husband as she had inherited this share on his death and by this inheritance the property had become ancestral.

It was held that the taking by a widow of the property jointly earned by herself and her husband on his death does not change its nature from self-acquired to ancestral.

Note 1.—It seems also that if the husband had a separate property earned by himself alone and taken by the wife on his death the property would still retain the nature of self-acquired.

Note 2.—This does not mean that if there be children the share of the husband can be gifted by the widow away from the children, as the intention of the husband in working together with his wife was to benefit the children.

Note 3.—The Synteng kurs of the husband made no claim. Under old Synteng custom they might have claimed as discussed in Chapter VI, but as the husband was a Christian, the instructions of Government in 1918 would be applicable. It has been said above that their claim would be on the same footing as a claim by Khasi kurs. They could not have claimed successfully at the time of his death because of the existence of the son but could claim only on the death of the son.

The law is not finally settled.

In the Sohbar case, the gift was to one of several heirs for special reason and the other heirs had a share in the ancestral property, in the Pohkyntien case there had been complete severance from the family. In the highlands, the reason against giving power to make a will is the existence of a power of gift or of dividing property in the lifetime of the owner. If the Wars are forbidden to make both wills and gifts, hardship will be caused.

By old custom, there is respect for the wishes of a parent or kur (it is considered a disgrace for children to bring a case in Court to upset the arrangements made by their parents), so they had some freedom to dispose of their property: the owners on their side were bound by ties of family and would not wish to deprive their relatives unfairly. Cases were not taken to the Courts. Nowadays there may not be such hesitation and cases may occur, especially among Christians, who have not the old reason, the burial of the bones, to cause them to keep their property for kurs. Enforcement by a Court must either be complete, when probably it would be intolerable, or partial, when the finding of rules to guide Courts seems impossible.

Freedom to Wars to make gifts of self-acquired property in the British portions of the Hills seems, therefore, a probable final decision, though the opinion of the War people themselves ought to be taken.

Gifts which result in minor children being left without means of support ought to be preventable.

The rigid prohibition of gifts seems a great hardship under modern conditions, so it is surprising that the Shella Confederacy where the people are advanced and intelligent traders, is the principal place of its existence. There must be a strong reason for its observance. As has been said above, it may even include prevention of unequal distribution by a parent of property among the children.

One special class of cases is worthy of notice. In the Khasi War States, the prohibition of gifts away from heirs is State law. There are many Wars, subjects of the War States but living in British territory and having much self-acquired property, earned in British territory.

They will undoubtedly desire to distribute their property in ways seeming best to them. But one or more of the heirs may seek to prevent this on the ground that the property is governed by the personal law of the family, the law of the War State.

CHAPTER X.

MARRIAGE AND DIVORCE.

I. MARRIAGE.

A woman cannot have a child who is illegitimate in the meaning of the word under other systems of law. The child is the heir of its mother whoever may be the father.

A public living together of a man and woman without any ceremony constitutes a valid marriage.

For these reasons the Courts are very rarely called upon to decide whether there was a valid marriage.

Ceremonies.

(1) Pynhiar-synjat (putting on of a ring).

(2) Lamdoh, identical with Pynhiar-synjat save that there is no ring.

(3) Iadih-kiad (partaking of liquor), a much simpler form.

The ceremonies are described at pages 127-131 of Colonel Gurdon's "The Khasis."

Polyandry. There is no such custom.

Polygamy. A matriarchal system is unfavourable to polygamy.

A man can marry only one wife by a formal ceremony but he can make an informal alliance with another woman. The first wife is ka tnga trai (the real wife); the second is ka tnga tuh (the stolen wife).

Among the Khasis the children of ka tnga tuh have no rights to the self-acquired property of their father while he lived in the house of ka tnga trai.

Among the Wars, the male gets a share in the property of his mother. So all his children, whether they are born of his ka tnga trai or his ka tnga tuh, have a right to a share in his property derived from his mother. If a War man acknowledges a child as his own, the child inherits to him.

Exogamy. The clans are strictly exogamous. Marriage within the clan is the worst sin that a Khasi or Synteng can commit. Both man and woman become "sang" (taboo) and are excommunicated. On death, the bones cannot be buried with those of the clan. All right to inherit property or to remain on clan land is lost. There is

no clan (jaid) among the Wars; the War country was peopled by emigrants from the highlands who lost touch with their clansmen at home. But the Wars trace their descent through females from the female ancestress of the family. Descendants of one female ancestress cannot intermarry.

According to Hindu law, property once vested cannot be devested by a subsequent disqualification, (Trevelyan's Hindu Law, second edition, page 874), but among Khasis and Syntengs, the person who commits such a sang is driven from the clan land.

Descent through females from a common ancestress is the test for exogamy. Some clans are connected (iateh kur) and do not permit intermarriage.

Marriage with a maternal uncle's daughter is prohibited during the lifetime of a maternal uncle. Marriage with the daughter of a father's sister is not regarded with favour, but is permitted after death of the father.

A man cannot marry the daughter of his father's brother (u para kha) or the daughter of his father's paternal uncle.

A man, divorced from his wife, cannot marry her sister during the lifetime of his divorced wife.

Christians observe strictly the rule of exogamy. No case has arisen concerning a marriage under the Christian Marriage Act in violation of the rule of exogamy, so there has been no decision upon its consequences as regards inheritance.

It is submitted that division of self-acquired property by parents in their lifetime so as to exclude a Christian child contracting such a marriage would be upheld by the Courts even in the War country where a child cannot be deprived of a share save for good reason.

The point of a right to ancestral property of a Christian so acting is more obscure, but as it is regarded as a " sang " there is reason for the Khasi opinion that he or she would be debarred from inheritance, as the Christians follow the same customs of inheritance as non-Christians.

II. DIVORCE.

Divorce is common, although it is an error to suppose that the marriage tie is lightly regarded. There are many reasons for divorce. Rai Sahib Hormurai Diengdoh gives the following in an article recently published. . Failure to live together happily, dislike

of the husband for his wife and a desire to leave her, dislike of the wife for her husband usually on account of dissolute habits or his ill treatment of her, adultery of the wife, lunacy, leprosy and lack of children, for Khasis consider the procreation of children is the chief end of marriage.

The Khasi ceremony is performed by both husband and wife taking five cowries or pice, in presence of witnesses. She gives her five cowries to him; he gives her ten cowries, she returns them to him; he throws them on the ground. A crier (u nongpyrta) goes round the village proclaiming the divorce. The ceremony is at times performed by a single pice or cowrie. If one party is unwilling to agree to the divorce, there is a custom that the party desiring it must pay something to the other. Except for this, each takes his or her own property, dividing the jointly acquired property.

The Synteng customs are different.

For example, in Jowai Doloiship the man pays eight annas to the village official, the basan, which he gives to the wife.

If the wife does not agree to divorce, the husband must give her two pieces of cloth.

If the husband does not agree, the wife must pay compensation (thnem) to the extent of the amount spent upon her by her husband during the marriage. The amounts paid by the parties differ in various doloiships, but the principle is that either party can compel the other to accept divorce without the forcible giving of cowries to the man as among Khasis.

Among the Wars in Shella, compensation is fixed when the husband and wife do not both agree to the divorce.

The children always remain in the custody of the woman.

Divorced persons cannot remarry one another nor can they marry again into the family of one another. Divorce is improper during pregnancy because the child would be born without bearing relationship to his father, in other words a bastard.

MARRIAGE AMONG CHRISTIANS.

The Indian Christian Marriage Act. XV. of 1872, and the Special Marriage Act, III of 1872 (marriages are very rare under this Act) are in force in the British portions of the Khasi and Jaintia Hills. The powers of the Governor in Council under the Christian Marriage Act are exercised by the Local Government.

Powers are bestowed under sections 6 and 9 of the Act not only upon clergy and pastors of well-known sects but also upon leaders of sects lately arisen in the Hills and unknown elsewhere. The Deputy Commissioner and Sub-Divisional Officer are marriage Registrars under section 7 and the Deputy Commissioner under section 8 for marriages in the States. Powers are freely granted so that persons of new sects may have no difficulty in being married by leaders of that sect.

To the non-British Territory (the States), the Christian Marriage Act has not been formally extended by notification under the Foreign Jurisdiction Order of 1902. By the Act itself, marriages in a State can be performed by a person having powers under section 8 or section 9 of the Act.

But as section 1 of the Act limits it to Christian subjects of His Majesty, the validity of the great number of marriages formed between non-subjects has been questioned. In letter number 27 Regn. 3105-J of the 14th June, 1895, Government said that marriages of such persons have to be made and dissolved by the law and customs of their State. The Chiefs have recognised the validity of such marriages ever since 1872 and repeated their recognition in an enquiry in 1931, although they opposed the formal introduction of the Act. The Government of Assam in letter 5326 Appl. & Pol. of 29-8-31 decided that this recognition made the marriages perfectly legal.

To a Khasi Chief the matter presents itself in a different light. The question to him is whether the marriage was " sang " (taboo) or not. If it be not against the law of exogamy among clans, it is a good marriage and this point is decided by the opinions of the kurs. The right to succeed to their property depends upon their recognition of the marriage as one not forbidden by their custom. To the Chiefs all forms of marriage are legal, so long as no question of breaking the custom of exogamy, observed by both Christians and non-Christians, is raised. To them, all marriage customs and laws are legal unless the relatives object.

By recognising the validity of marriages performed by persons licensed under the Marriage Act, some of the Chiefs argue that they merely expressed themselves willing to recognise that kind of marriage along with any other kind of marriage practised by Christians.

DIVORCE.

The Native Converts Marriage Dissolution Act XXI of 1866 and the Indian Divorce IV of 1869 are in force in the British portion of the Khasi and Jaintia Hills. The Deputy Commissioner has been given the powers of a District Judge under Act IV of 1869 by section 6 of the Schedule District Act vide Gazette of India, 1897, Part I., page 299.

The position in the States is described in Government letter Regn 3105-J of the 14th June, 1895.

The Divorce Act is not in force in the States except for British subjects.

The Deputy Commissioner was told in 1881 that he should decide cases between other than British subjects in accordance with the spirit of the Divorce Act.

Some of the Chiefs gave their written consent in 1882 that Divorce cases be tried by them sitting with the Deputy Commissioner.

These were the Siems of Langrin, Maharain, Mariaw, Mawiang, Nobosohphoh, Nongstoin, Rambrai and Nongspung, the Lyngdohs of Sohiong and Lynniong and the Sirdars of Nonglywai and Mawdon.

(In practise the mixed Court has been found very difficult to hold, as the Deputy Commissioner and the Durbars of the Chiefs cannot meet save at very long intervals. So the Chief and Durbar hear the case and send to the Deputy Commissioner for confirmation).

The Wahadadars of Shella agreed that the Deputy Commissioner should hear such cases alone

The Chiefs of all other States refused to admit any interference with their powers of divorce.

(The above letter of Government correctly describes the position; Aitchison is wrong on the point; the original agreements are still extant).

The course adopted in 1883 by the Government of India with regard to those Chiefs who had refused any interference was to inform them that the Deputy Commissioner was empowered to adjudicate in any divorce case where either of the parties complained to him of injustice on the part of the Chief.

In 1895 the Government of Assam issued a circular letter to the Chiefs advising them that they should grant divorces only for reasons laid down in the Divorce Act.

In view of the terms of the correspondence in 1888, this letter must be deemed to be by way of advice rather than of order.

There have been complaints for many years back that Chiefs give divorces for reasons other than those in the Divorce Act. If this be brought to the notice of the Deputy Commissioner, the Divorce can be set aside but as both parties wish for the divorce in nearly all such cases, no report is made.

PROBLEMS.

1. Marriages under the Act are recognised by the Chiefs as valid. Some replied to a question whether they desired the extension of the Act to their territories that they recognised such marriages as the personal law of Christians with which they had no desire to interfere. Cases have recently arisen of marriage by pastors of a new sect which practices marriage outside the Act. A Chief may reply, and indeed has replied, that he recognises its validity as the personal law of that sect of Christians.

2. In the Lushai Hills there is no Marriage Act. There has been much discussion for and against an Act in the Khasi Hills of recent years. It is reported that the great majority are in favour of the retention of the Act.

If it were made not applicable to Khasis, no great harm seems likely to follow. The difficulty would arise about divorce. If there were no Divorce Act and Christians ordered their divorces as they pleased, there would probably be a difference in the divorce law of different sects. If new sects arose with a practise of easy divorce and received converts from the other sects, there would be no general Christian law of divorce recognisable by the Courts. It would be quite impossible and indeed scandalous for the Courts to recognise the divorce custom of sects whose main reason for existing was the provision of easy divorce for persons who desired to leave a stricter sect and join for this purpose.

The Courts would be rapidly forced to take up the position that any public living together is a marriage and separation a divorce for all purposes of Khasi social life and any violation of marriage vows concerns the churches who can expel if they please.

This position may not be a bad one. It is really in existence at present, as the legal consequences of the marriage law have never been applied by the British Courts in the Hills.

But it is necessary to point out the results to those who hold this opinion.

If the Christian bodies failed to agree on a divorce law, the Courts could not administer one. The method is only possible if there be general agreement.

8. A solution to difficulties present throughout India has been embodied in a draft bill placed before the Government of India by the National Christian Council. It lays down:—

(a) Every marriage in which both parties are Christians must be performed according to the provisions of the (amended) Act. If performed otherwise, it shall be null and void.

(b) Every Christian person married under the Act, such marriage not having been dissolved by a decree of a competent Civil Court, who during the lifetime of his or her husband or wife, contracts any other marriage, shall be subject to the penalties of sections 494 and 495 of the Indian Penal Code, notwithstanding the fact that before contracting such other marriage, he or she may have renounced the Christian religion.

(c) The Indian Divorce Act shall apply to all marriages contracted under the Act.

The freedom at which the proposals aim is as follows:—

(1) Any Christian body which shall have tendered evidence to the satisfaction of the Government of India that marriages by its own ministers will be conducted in such a manner as to fulfil the requirements of the Act or stricter requirements will be entered in a schedule and will be at liberty to regulate marriage of its members according to its own rules.

(2) If a party to a marriage, being a member of a particular Christian body, procure his or her marriage otherwise than in accordance with the rules of the body to which he or she belongs, he or she may be subject to such censure or penalty within that body as may be provided by the rules of that body as a voluntary association, but the validity of the marriage, if it is solemnised under the provisions of the Act, shall not thereby be affected.

Persons who will have powers to perform marriages are ministers of schedulel Christian bodies and marriage officers.

The following may be made marriage officers: (1) all Marriage Registrars, (2) any Minister of any Christian body not included in the schedule, (3) any Christian man not being a Minister, recommended to the Local Government by the authorities of a Christian body.

NOTES ON THE PROPOSALS.

The provision that marriages except under the Act are to be null and void seems to imply that children born of persons cohabiting without marriage under the Act have no right of inheritance.

Christian Khasis have the same law of inheritance as non-Christians. Such an idea of loss of inheritance is completely alien to Khasis.

If all Christians were duly married under the Act and did not renounce Christianity and if all Chiefs were induced to recognise only marriages under the Act as valid and no other all would be well.

If a sect arose (one has arisen) which obstinately refused to use the Act, if persons continue to form irregular connections and be expelled from their church and live as they please thereafter (as happens now), if the Chiefs or some of them recognise unions outside the Act and do not agree that children be disinherited, the Courts will have no lack of business.

If the law in the States is to differ from that in the British portions and from State to State, (even the discovery whether a party to a marriage was or was not a subject of a Chief or of what particular Chief or a British subject is a matter of great intricacy as will be shown in the chapter on clause II of the Sanads), plenty of opportunities for evading the law can be found.

If the assumption be correct that the Act will deprive children of irregular unions of their inheritances, the consequences of the Act in British territory will be at times curious.

A and B are sisters. A is childless and a non-Christian. B a married Christian, leaves her husband, renounces Christianity, divorces her husband by Khasi custom and lives with a man by whom she has children. These children cannot, by the Act, inherit to B, so A will inherit. A dies childless. The children of B. will then inherit to A as they are perfectly good heirs from a non-Christian standpoint.

Even if B had merely left her husband and lived with another man and had children without any ceremony of divorce, her children might inherit to A. This is, however, not certain as the non-Christian kurs might declare the children as " sang."

No assistance can be given to them by B by making a will in their favour (as wills are illegal) and a gift of ancestral property in her lifetime could be successfully challenged in the Courts by her kurs if Christian kurs, and it seems even by non-Christian kurs if they decided to call them " sang."

One means of avoiding such problems is to create a new system of inheritance for Christians, thus disrupting the present Khasi society and system of property.

The other means would undoubtedly be adopted and that is to hold the Khasi law of inheritance applies to Christians however irregular their married life may be This would render inoperative one main intention of the draft bill to make the marriage null and void, if this intention really be to bastardise the children and make them incapable of inheriting.

The other intention of the Bill is to prevent desertion of the married partner and remarriage after renouncing Christianity.

This is in many respects a salutory provision, but is not easy understandable to a Khasi who, having been expelled from the church for sexual irregularity and told he is no longer a Christian, proceeds to make an honest woman of the lady by a ring ceremony in Khasi fashion and then finds himself prosecuted for bigamy. But if he be clever he can marry her quite validly in Khasi law by simple cohabitation, so escaping conviction for bigamy.

Renunciation of Christianity by both parties to a Christian marriage does not entitle them to a Khasi divorce according to the draft bill. As, among the Khasis, divorce does not affect the children so greatly as in other countries, owing to the independent position of the mother, the restriction can be criticised. It would in practise be entirely evaded, as at present simple public cohabitation without a ceremony is recognised as a satisfactory marriage by Khasi customs.

It may be objected that the new bill only makes explicit what is latent in the present Act. The answer to this is that the present Act and its legal consequences have never been applied in this district as Deputy Commissioners have been wise enough to refrain from drowning themselves and the Khasis with them in this sea of

perplexity and have left the people to make their own domestic arrangements and be converts or reverts to any religion.

The important question of the Khasi law of exogamy has not been considered. By Section 88 of the Christian Marriage Act, the Act cannot validate any marriage which is contrary to the personal law of either party. It seems certain that exogamy is the personal law of Khasi Christians. If the Christians ever abandoned exogamy and allowed marriage within the clan, they would cause an upheaval in Khasi society and shatter the present system of mutual toleration in matters of inheritance.

If there is to be any effective application of an Act it seems that:

(a) It must not affect inheritance.

(b) To be acceptable to the Siems and other Chiefs it must be applicable only to those Christians who choose to get married under it.

(c) Those married under it must be subject to a Divorce Act and cannot evade it by joining another sect.

(d) Those Christians not married under the Act must apparently be treated by British Courts as governed by the wide Khasi customs of marriage and divorce. If they act contrary to any special rule of their Church, they can be expelled from that Church. This result will be caused by the probable failure of Christian sects to agree on any law of divorce which can be recognisable by the Courts. But if there be such agreement, the difficulty would disappear and a custom could be recognised.

(e) If both parties to a marriage under the Christian Marriage Act renounce Christianity, there is some reason for allowing a divorce by Khasi custom. The reason would at any rate appeal very strongly to the extremely independent spirit of Khasis, very apt to see persecution in control.

CHAPTER XI.

PRINCIPLES OF KHASI CUSTOM

BY

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1. Who are the Khasis?

The people who inhabit the Jaintia Hills, forming the Jowai Subdivision of the Khasi and Jaintia Hills District, are known as Syn-

tengs by the people who dwell in the uplands of the central part of the district and who call themselves Khasis. The folk of the deep valleys and hill-sides in the southern parts of the district are called Wars. The Syntengs call themselves Pnars and speak of the Khasis as the Khynriam.

But the term " Khasi " is a general name including all three classes of the people when speaking of the entire race. These classes treat one another as akin, while every one else is a foreigner or alien. The people of the Bhoi country, the low-lying hills on the north, though they are known by the name "Bhoi" are also Khasis. There are also amongst the inhabitants of the malarial tracts on the north some who are not Khasis; these are the Mynris, the Kukis, and the Garos, and others whose history and relationship are distinctly not Khasi and who have no affinity with the Khasis. Otherwise we know the clans of the Bhois and their relatives in Synteng or Khasi, and we can in several cases connect the clans of Bhois with corresponding clans, though under another name, among the Syntengs and the Khasis

The history of one U Sajar Mynlri, the leader of a vast army of families from the Jaintia Raj in the east through these tracts on the north to the country in the west, is current as tradition amongst the people of Nongpoh Thus one finds the Nongklaw Siems claiming relationship with the Jaintia Raj family. There is a connection in the history of the Khadar Lyngdoh of Nongpoh with the people of Nongkhlaw State. The Jirang people still speak a language much like that of the Anwi villages of the Synteng country (Jowai Subdivision). There is the history of the Shella people being of those families who came to Pom Shella, a place on the west of the Mawpat hill of Shillong, and who from there moved downwards to Shella. We see a similarity in the dress of the women in the Shella villages with that of the Synteng women. These with the many traditions and historical facts found in the country serve to prove that the Synteng, the War, and the Bhois are all " Khasis " and they observe the matriarchal system and are exogamous in their rule of life. They are the descendants of the original folk who came somewhere from the east and found a home in the beautiful hills between the Kopili and Rangdi rivers in the mountain ranges between the Assam valley and Sylhet.

2. Results of contact with outside influences.

Khasis have gained by contact with the outer world. This is due

to the fact that Khasis have not through contact with civilisation lost their own outlook on life. They cherish a sense of their own importance and are keenly alive to their position as one of the distinct races of mankind. Their language indicates that Khasis belong to the family of the earliest of the powerful Mongolian invaders of India and backed by customs which are unique in themselves a Khasi finds that he is master of himself and at liberty to adopt anything which he thinks is for his own good and in so doing he is entirely free from anything in the nature of caste scruples. A Khasi will be found willing to adopt any new custom which appears to him likely to increase his material comfort and in his system of family life he finds ample scope to exercise his independence without fear of collision with either home or external forces. He is not averse to any form of honest labour and is free from anything in the shape of false pride. A person who has been earning big wages will gladly work as a coolie if circumstances force him to do so, still having pride enough to look everybody in the face and feel that he has a right to his place in the world equally with others, yet not losing his sense of proportion.

The constitutional form of political existence and the matriarchal system of his family life still bind a Khasi; he remains a son of his race in idea and in thought even if he changes his faith. Such light as he would seek in other religions must be such as to enlarge his outlook on life and his sense of the bigness of life. Thus Christianity finds a ready field in the mind of a people who seek for freedom rather than for self-abnegation.

We find (1) in a Khasi that contact with other races does not adversely affect or impair his national characteristics.

(2) Khasis have gained by education, by improved sanitary methods, and scientific treatment of diseases. University graduates are found even in villages and the good effects of sanitary and medical knowledge are apparent in the increase of the population and the decrease in the death rate of children and women in childbirth.

(3) Khasis have much political independence in the present system of the British Administration of these hills; by their disputes and the enquiries made into them, Khasis have gained in that the rights, privileges and customs of the country have now been embodied in many of the judicial proceedings and enquiries, and are so made possible for codification. There has been no interference with local customs, for it has been recognised that progress must be based

on the existing customs of the people. Destruction of any such fundamental custom will only result in the destruction of the people Similarly the uncontrolled exploitation of forests, minerals, and agricultural lands will result in harm to the race. At present the British Government is the protector and guardian of the resources of this country The time is fast approaching when the children of the land, with the education and ideas and the knowledge of the advancement in other parts of the world will turn to the resources of their own country and it is their good fortune that it has been preserved for them

(4) Some social functions have been in the past suppressed by missionaries and the Christian section of the community, as they involved certain heathenish customs and rites but Khasis as well as missionaries will soon find that for the national existence of the race they will need the revival of the national music, dancing and healthy pastimes conducted so that the country people can enter into them without the encumbrances or spell of the ceremonies and rites.

3, The position of Khasi Women

Women amongst the Khasis enjoy a position of unusual dignity and importance To students of the feminist movement, this District should afford an interesting field of study. For generations Khasi women have been custodians of property in whose strength of life and character the men of their clans confide their life earnings and the hope of the peaceful resting of their souls Their counsels carry weight with their male relatives, and with them these women share the burden of life but in spite of their responsibilities and duties they have lost none of the fascinating characteristics of their sex

From this race of women there are now graduates of the Calcutta University, in Arts, Medicine and Law Several of these lady doctors are serving in the hospitals in this Province. Khasi nurses are in the Mission Hospital in Shillong and are found even in the hospitals of Calcutta

4 The Khasi idea of Marriage.

Khasis have by their matriarchal system made the man and the woman so independent of one another that the complications necessary in other systems of law do not arise in the Khasi relationship of man and woman. Yet the fact that Khasis have such a sacred reverence for marriage is visible in concrete instances of family life

found in Khasi homes all over the country, where one man is the husband of one wife, and they have lived to see children and grandchildren grown into the groups which form most villages in the country. The elaborate ceremony, religious and social, where God the creator (U 'lei thaw briew man briew), the god of the state (u ne ka 'lei synshar), and the important Ka " Iawbei " and " Thawlang" (ancestress and ancestor of the clan) are invoked, as described in the Chapter on Marriage in Colonel Gurdon's "Khasis" will show that the Khasi idea of marriage is the spiritual fact which underlies marriage.

With these remarks I can safely dismiss all the aspersions against the Khasi and Synteng idea of man and wife. Any low opinion of their relationship held by an outsider shows that he has not been able to grasp the Khasi idea of life. I would stress, too, the absence in this little nation of the derogatory treatment of woman found in other parts of the world. The Khasi woman is no mere chattel of the family of MEN. No feminist movement is required to free her from bondage. She is the glorified person, free to act, yet the partner of the man. Dissolution of the union of a couple is regarded as their failure to realise the ideal due to the hardness of their hearts.

5. The Khasi interpretation of the human race.

The Khasi view of the human race as embodied in their matriarchal system is MOTHER-SON.

We can make this system to say—the son is the father of the man and the daughter is the mother of the son. So the relation is

The origin is the mother, and the mother is the person who stands between the father and the son.

The son belongs to the mother and the mother belongs to her mother and this family through mothers to the common ancestress and from the ancestress to the present day children of mothers is the clan of or through mothers. Hence no Khasi child can be an illegitimate child whether the mother bore that child from a husband with whom she has gone through a formal ceremony or not. The child by right of birth from his mother has a claim on that family to which the child and the mother belong.

The mother and the daughter of the family rear up the son. The son works in this family of his mother and her daughter (the sister of the man) which rears him. He pools his earnings with theirs. This son is the son of that family, "u khun lajong" (their own son), and is some one else's son (u khun ki briew) with regard to other families. Whatever belongs to him or is earned by him in that family, as child of the house, belongs to his mother of the family to which he, his person and the last things of him—bones and ashes—belongs (vide Page 82 of Gurdon's " Khasis ").

When the son marries and lives with his wife, though the mother claims the person of the son as hers, the son with his wife becomes the son of the new family, and, for other than his own person, is the son of that family and as such he becomes the father of the family through his wife, who again is the daughter of some one else's. The family of his mother looks upon the son as one who has gone to some one else's house (uba la leit sha ing ki briew), and from whom they could expect not only as uncle who comes when it is a question of life or death (cf. page 79 of Gurdon's " Khasis "), but much more also, as their own life and blood who, when those crises in life arise, belongs to and is reclaimed by them. So we have that the man belongs to his clan not only by its name by which he is distinguished as " Ho Rynjah," but in flesh and blood (his bones and ashes), and in fact his very person is reclaimed by the clan even from distant places from where his bones and ashes cannot be reclaimed. This is done by the throwing up of cowries and ceremonies on those cowries.

The mother with her daughter, the latter as the potential mother in the family, all the time remains in the family as the receiver of the remains of the son and the custodian of their last things on earth. While we find the son in his new house, where he has gone, become the son of that house with someone else's daughter as his wife. Eventually with this wife he becomes as a rule the father and his wife the mother of children. This mother now stands as the person between the father and the children. But curiously the explanation of this connection between the man and the woman is not in the woman but in the children, as in that relation between man and wife where there is no child, the position of the mother (wife) is in default as she stands for no one with regard to her husband who is the father. Hence barrenness is one of the causes of divorce; but as I have said, the Khasi's means of resort to divorce is not a part

of the Khasi's idea of marriage and of life, but of the cruelty of the heart. The true idea of life is a couple who live together to the end of their days (kiba da ia shong ia iap tymmen). So besides adultery, incompatibility of temper and barrenness are admitted as reasons for separation.

6. The circle of consanguinity.

The description in Colonel Gurdon's " Khasis " gives us an idea of the circle of consanguinity. The Khasi idea of kinship in the first degree is mother-father-children; mother's mother, father, sisters and brothers; father's mother, father, sisters and brothers—and all relatives of the clan from the mother's side. All others come in the second, and there are those who come in the third degree of relations. Those in the second and third degrees are found at Pages 77 and 78 of Colonel Gurdon's " Khasis." Other minute details of relationship are points of controversy even amongst the Khasis.

7. The Khasi conception of their person.

We have seen to whom the man belongs. He is of the clan in life and in death. This being the Khasi idea of relationship, so his children have to return to the relatives the bones and ashes of the man, with something tangible to preserve his person (Ryngiw) in the family—his full dress and ornaments if he had these and something of his earnings. Among the Syntengs if the wife wishes to keep these she should take the vow of remaining a widow for life, failure on her part to keep the vow is a great " sang " which entails punishment of stripping her of all the property by the relatives of the man. Therefore the Khasis take the middle course of returning with the bones and ashes of the man as much as they could and should, and the relatives of the man never demand more than the means of the children can afford.

8. The position of man in the family.

The result of this idea of the man being the son of the family of his mother to whom he belongs and the son of the family where he went to affiliate himself—that is the family of his wife and his children—is that the son has no status with regard to property apart from his own mother in the first place and apart from the mother of his children in the second place. In his own mother's house he is the son of the family, and also in his new home with his wife he is the son of the family of his wife and children. But in this house

through his wife he becomes the father, while in his mother's house, where he keeps his person, he assumes the position of uncle. Thus the son is the father—"uba lah uba iai" and the uncle, "uba ha ka iap ka im." (The father who bears the heat and burden of the day, the maternal uncle who comes when it is a question of life or death).

Colonel Gurdon in his book on the Khasis says: "Notwithstanding the existence of the matriarchate, and the fact that all ancestral property is vested in the mother, it would be a mistake to suppose that the father is a nobody in the Khasi house." It is true that the "Kni" or mother's elder brother, is the head of the house, but the father is the executive head of the new home, where, after children have been born to him, his wife and children live with him. It is he who faces the dangers of the jungles and risks his life for wife and children. In his wife's clan he occupies a very high place, he is second to none but U Kni, the maternal uncle, while in his own family circle a father and husband is nearer to his children and his wife than U Kni.

9. The Khasi ideal of life. His "Niam" (Religion).

What has been stated serves to show the position of the Khasi male in the Khasi, Synteng and War ancient custom. His position in the family is an honoured one as the bread-earner and as the protector of the person of his mother, his sisters and young brothers, and later in life of the person of his wife and daughters and young sons, and his position as the exalted defender of his "Niam." He is the Kni (uncle) and he is the Kpa (father) without whom family worship and religion would be an act of sacrilege. His position may appear to lack legal personality in the eyes of foreigners, some of whom may form the fallacious idea that the Khasi husband can be compared to a working and breeding bull, but this negation of self is to a Khasi man the foundation of his self and person in a family which centres round his one thought, and that is his life and his soul and the life and soul of those dear to him. Hence his idea of "Sang," hence his idea of God and the idea of the next life. The greatest idea is the survival and the resurrection even of this matter in the glorified next state. Therefore the "Maw shieng," the "Mawniam" and the collection of the bones thereto, and the firm belief in the power of sacrifices and cleansing offerings of the living for the dead over their remains and their ashes, even over the cowries thrown up (kynting sybai) for the

irrecoverable remains of those dead in far and unknown places, form the most sacred possession of man. No other possession or consideration must come between him and his " Niam." Everything else is either a mere "nothing" or a "Sang." And nothing or no " Sang " should come near his " Niam." Man in his position as defender, not only of his family but also of his fellowmen, finds himself either an active or a prospective shedder of blood. He is therefore not a fit person to come near his "Niam." Males are prospective fathers in families other than the members of the families of their mothers. These families have their own family religious duties and obligations where he is the Kpa (father). Thus man does not keep the house and the Niam (religion) and the property, for he is a shedder of blood (u Nongialeh thma) and a person who will be son and father in another family (uba leit sha ing ki briew) : the generator of life and the destroyer of life. This person cannot therefore be the fit person to keep the " Niam." Who can then be more fit than his mother, and after her, his sister; and who can be more fit than his youngest sister who will remain longest with his mother and take care of his aged parents and of himself to be the keeper of his " Niam "—and who is more fit than his wife, the mother of his children, and his youngest daughter, the keeper of their parents, to be the custodian of the " Niam " of his wife and children? For this " Niam " he stakes his all. Therefore he leaves his earnings and his possessions and his acquisitions with his mother and sisters and later with his wife and daughter to them not as heirs and inheritors and absolute monopolisers of his possessions, but to them as custodians of his " Niam " and of his possessions for his " Niam."

It is only with some of the Wars that we find that, failing sisters, the youngest brother is to Ri Shieng.

10. Property vested in the youngest daughter not as heiress but as custodian for the " Niam."

There is an idea in the present day that the youngest daughter inherits the Khasi property. This is due probably to the use of the word " inheritance " borrowed from English law. This idea supplies the present-day Khasi with the novel theory of an all-powerful daughter who has freedom even to the extent of mismanagement, without responsibility to her kurs. The idea of " Niam " goes un-

regarded and the old position of the male relatives is set at nought. The loss of the religious atmosphere in which family life is surrounded must be detrimental to the country. Without " Niam " or some counterpart in Christian families, social bonds become unloosened.

A right understanding is necessary of the meaning of the " Ingkhadduh " (ing—house: khadduh—last) and the law of custom by which this house is given to the last or youngest daughter: and the house being the place where ceremonies are performed (leh hiam), where the Kpa (father) and the Km (uncle) are the earners, supporters and defenders of the body and the " Niam " (the material and spiritual welfare) of the family, we find ka khadduh (youngest daughter) in the " Ingkadduh " is the receiver and custodian of property as the steward of family worship and the watcher and mainstay for the peace and the welfare of the living and the peace of the departed souls of the Khasi family (Ki Kur).

11. The " Niam " as the cementing factor of the Khasi family.

Thus " Ka Niam " is the cementing factor of the family. The parental or ancestral home is the " Ing Niam." The property is the property of the family, who are bound together by " Niam," and such property is also bound up with obligations connected with that " Niam " of the family. In that circle of family religion and worship, the females keep up the " Niam," while all the males are prospective sheaders of blood, and prospective fathers of other families who are not members of the families of their mothers. The youngest daughter being the last person to keep house for the parents with them and after them—so she is the keeper of the "Niam" as well as of the property (Ka nongbat ia ka Niam bad ia ka spah jong ka ing).

12. Khasi property is vested in the mother—this mother is virtually the youngest daughter.

Thus we find that the son cannot take his earnings in his mother's (sister's) house with him. This son, also as son in the new house where he is father and executive head, cannot take his earnings in that family outside the family. In this family of mothers, property is vested in the mother. Thus in mother's house or in wife's house, property is vested in the mother. This mother is virtually the youngest daughter as described in the paragraph, " The Khasi idea of life. His Niam (religion)."

18. The children in the eyes of the Mother.

In the eyes of the man's wife, the mother of his children, only her own issue are legitimate claimants. Thus the children of another wife (mother) have no status with regard to the man's earnings in his wife's house (the house of the mother of his children).

But in the eyes of the man's mother all children are legitimate as being born of mothers related to her through their union with her son. Hence in the War custom where sons get shares in the property in their mother's house, we find all children of the sons, from whomsoever born, have a claim on the consideration of their "Nongkha" (lit.—family which gives birth to), i.e., the family of the man's father. This idea of allowing shares to children of brothers and uncles is not a novel idea of the Wars, but springs from the principle that the property of the man as son of the family is vested in the mother of the family, and the man's mother has a feeling for all children born from her stock.

We find in the Synteng family that everything is kept in the mother's house until the son goes to live with his wife. Among the Syntengs, if he does this at all, he does so only after children have been born and life is certain with his wife. Thus Synteng families cling so to the man's property and earnings. With the Khasis the man begins to acquire for himself and his wife and children as soon as he marries, for he leaves his mother's house when he marries. That is why we find life is more liberal and considerate in the Khasi idea of property. With the War he remains attached to his mother's house after his marriage even longer than with Khasis, as he works in the groves belonging to the mother's house even after his marriage. This was necessary in the single families which ventured right into the valleys where mother-son-daughter and their connections must keep together to bring thick jungles under cultivation. Hence the mother of the man in whose eyes all children are legitimate must see to the provision of the man's children. This causes a more extended form of shares which reach right down to children of sons. Hence we have "Ri-Seng" in the War country. But this entails very strict obligations on parents that no gifts whatsoever can be made, as their property being the result of the joint earnings, no such free gift is possible to the exclusion of others.

But this is not only in the War country, but is the principle which underlies the idea of property among the Khasis and the Syntengs as well.

14. The position of the mother.

We now see the reason why the mother becomes the link between the children and the father and how property is vested in that mother. Thus the mother (Ka Iawbei) is a very important person. She is the ancestress and it is an act of sacrilege to offend this person. The mother is offended if the religious obligations in the family are by an act of any member made impossible for that member to be received in the family sacrifices. The great " sang " (act of sacrilege) is sexual connection of a man with a woman who belongs to the same clan. The excommunication by the kinsfolk extends to their last things, i.e., the bones and ashes The second is to swear even for the vindication of their truthfulness against their parents or the parents of their parents. Thus children never dare to " ialeh " (engage in a fight) with their mother, father, and their parents, or with brothers or sisters of their parents, either by force of strength or by force of law. This will give the parents at once the right to excommunicate such children from all rights to the family stone (Mawniam) and family property. I have stated only two of the important sins for which Khasi parents might excommunicate their children and grand-children. There are other cases also in which parents can take such steps against their children and grand-children, but families never resort to such steps of disinheriting their children save in extreme cases as those of the two important ones I have mentioned.

Thus children of another wife, besides having no claim on the property of the father in his wife's house, are in an awkward position in their father's mother's house if they should offend their father's maternal relatives.

15. The power of the family in the distribution of property.

There is the custom that parents and grand-parents would say their wish as to what should be done after their death. They would even name property which should be given to a certain child. These wishes would be respected by the members of the family when making awards out of family property after death. There are cases in

which the wish is reduced to writing in these days of literacy. When parties do not object, partition of property is carried out on the lines of these writings, which might in other words be called " wills." But this Khasi will is the mere expression of a wish and it has no legal binding save as evidence of what the person making the will or expressing the wish would like to be after that person's death. The Khasi sentiment is however where the wish of the deceased parent is known, to carry out or give effect to those wishes. There is the sense of failure in duty if it is not carried out. Thus it has a moral if not a legal binding and where it can be proved it is valuable evidence. Fearing contests which are apt to arise if left until after death, parents would give away property during their lifetime and leave ancestral property and property which would be owned jointly. Otherwise when parents do not wish to fritter away or break up their estate or give up management of their property during their lifetime, they say what they would like should be done or how the property should be divided or shared after their death. But in this there is the risk that the children get opportunity to quarrel and raise objections after their death, and the risk is the more serious because all property after the death of parents becomes ancestral, and as such, the youngest as custodian of family property for the " Niam " (religion) and " Mawniam " or " Mawbah " (family stone where the bones of the dead are kept) and " Leh Niam " (performance of ceremonies for the dead and the living) can claim the property left by parents as ancestral for such religious purposes and no State or Court would be disposed to decide against the claims of religion of the family.

The Khasi custom is so contained within the limits of the ideas I have described with regard to the life of the man with reference to his mother's family and his life with his wife and children that any attempt to give him an independent status (1) with regard to property in his mother's house and property earned by him previous to his marriage, and (2) after marriage with regard to property in his family of the children apart from his wife, the mother of that family, will result in the breaking up of the Khasi idea of marriage and kinship and with it, the Khasi property. For the same reason we find that we cannot fit in with Khasi custom to give either the wife or the father the power to make a will of division of property, as no father or mother can in the first place will property outside their own children. With the children born of a mother the Khasi

law of property is clear and it makes no provision for division of that property with other relatives. With personal acquisitions such as property acquired by the parents during their lifetime, there is nothing to prevent such parents from making gifts out of their acquisitions to their children in the way they like. But even in this case, as property is through the mother and is in the family of that mother, the father and the mother must first make up their mind jointly. A separation of the power of the father and of the mother with regard to such property will result in chaos It needs mutual consent of the father and the mother for the disposition of their joint earnings, and their wishes are respected by one another and after them by their children Parents again are bound by the laws by which they must make provision for the Ing Khadduh, and they remember that in such provision there is provision not only for the youngest daughter but for all their children in times of adversity and for their " Niam." If no wish is known or gift given, the property becomes ancestral, and the rule about ancestral property is followed. Ancestral property is property which has remained in the family, and division of the ancestral property is not only in the mother or the father, but in the greater circle of mothers, fathers, uncles, brothers and sisters, and there too the mutual consent and arrangements of the greater circle of relatives are the guiding and determining factors.

Thus in the division of family property Khasi courts follow simple rules of custom and rely on the statement of the relatives who are supposed to know and are responsible for the religious duties of the family.

Any suggestion allowing the man to give the property or his earnings for his children from his wife's house as a right to his kurs is not sanctioned by the Khasi rules of custom. So also the idea to take from the kur's house to a man's children is most repugnant.

The futility and confusion of any attempts to divide property in ways other than by custom are self-evident. They can lead to no decisive ending.

" Gifts away from the heirs " of either ancestral or self-acquired property do not in practice arise for reasons explained, save in the exceptional case of a person who can be said to exist apart from the ancestral family of the mother or of the children's family of the wife. This can only happen in the case of a "iap duh " person who has accepted another faith and the property is entirely self-acquired, and there are no religious encumbrances.

We have now seen the Khasi view of marriage, the conception of property, the idea of relationship and the power of control in the family. Up till now change of faith has not produced any change in the Khasi's idea of kinship, he is still matriarchal in custom and exogamous in life. Ancient Khasi customs are still the ruling principles in family and social life.

If change of faith does not demand by the rules of marriage and habits under that faith a change in the Khasi idea of kinship, the people will remain matriarchal in custom and exogamous in life. But if any rules of marriage, etc., require a change in the Khasi idea of kinship and the Khasi exogamous principle of life, they would result in a desire to excommunicate the person accepting that faith from the Khasi family and property.

Excommunication from the Khasi family means not only from one's own family but from the Khasi families of the country, as, until there are families who would accept such principles, it would be difficult to find people who would give their daughters in marriage to excommunicated persons. To " kylla jaid "—to change the clan—is not yet attempted.

Excommunication entails a great sacrifice on the part of the person who accepts a new faith, as in former times we have cases of persons on becoming Christians being deprived of property and losing the right to fill important positions in the Government of the States because of refusal to take part in Khasi religious ceremonies.

There seems no way of protecting Khasi Christians or Khasis who accept other faiths, in the case of ancestral property, when religious obligations are involved in holding property. Khasis who have become Christians or have accepted other faiths have to forego their claims, or make the best of settlement with their Khasi kurs. The difficulty is apparent even in the ruling that Government has given on the subject.

There is now a class of people who have renounced the Khasi religion by becoming Christian and have grown into families which are separate from and independent of their stocks in the old faith; they by their own efforts and earnings have acquired property apart from the old stock. So long as these families preserve the matriarchal system and keep the clan strictly exogamous, the rights of parents in these families should be restricted as in the old religion so as to prevent them from making wills outside of their children, and should extend as in the old custom to the power to disinherit

their refractory children. But as in these families the position of the youngest daughter or child as custodian of property is no longer necessary, parents might be allowed the right to make wills with a view to provide out of their property for the future of their children. The manner and the division of property might for the present be left to the parents provided that the will makes provision for all minor children besides those mentioned in the will. These wills should be made and registered during the lifetime of the parents. Courts will adjudicate in the case of any such property left without wills or expressed disposition in the will, on the evidence of intention or wish of the parents with regard to the division or disposition of the property amongst their children. Gifts should be made by parents during lifetime. Unless otherwise agreed and expressed in those wills, a will should not operate before the death of both parents.

PART II.

CHAPTER XII.

THE LAND SYSTEM IN THE JAINTIA HILLS.

1. In 1835 the Raja of Jaintia was deposed and the hills became British Territory.

No revenue was taken: the Dolois of each circle used to send a he-goat every year to the Government Agent at Cherrapunjee, a continuance of the custom of an annual tribute of a goat from each village to the Raja. In 1858 Mr Allen made a report to the Government of Bengal on the administration of the Khasi and Jaintia Hills. He found that there was State (Raj) land in the hills, some of which was cultivated for the Raja by his servants and some was held by his officials as service lands. He collected the information that such land existed in eleven doloiships.

This land had been kept by the Dolois and other officials or seized by unauthorised persons after the deposition of the Raja, as there had been no longer any managing authority. Mr. Allen recommended an enquiry in order to preserve the rights of Government as successor to the Raja.

2. So in 1859 some Bengali amins were sent to measure these lands. They found a total of 1468 hals, equal to 6239 acres, (a hal being 4¼ acres), in fifteen doloiships. There were 655 hals of Raj land, 207 hals held by Dolois and subordinate village officials such as Pators, Basans, Lyoons, village criers, musicians, etc., 212 hals held by Syngdohs (priests), 299 hals of Sanna and Bardari lands (a Sanna and a Bandari were chowkidars of the produce of the lands), 85 hals held by puja officials and 7 hals held by Raja's servants. Although the lands were measured, no attempt was made by Government to control them.

3. In 1860 a house tax of one rupee was imposed. This caused a rebellion which was soon quelled. Then fees for judicial stamps, income tax and imposts on timber and fisheries were introduced. The resulting discontent blazed out on the occasion of interference with a religious ceremony in 1861 by a police officer. The rebellion was suppressed only after 15 months of fighting.

4. In 1867 Mr. Shadwell, the Sub-Divisional Officer, received orders to measure all cultivated land in the Jaintia Hills. The

staff employed consisted of three men only who worked during one cold weather. The results are quite unreliable, many of the areas entered having been probably obtained by reports from illiterate Dolois. An enquiry which would have any semblance of accuracy was quite impossible in the short time with this staff. The permanently cultivated terraced wet rice land (called hali) was put as 3920 acres of Government service (Raj) land and 4001 acres of private land. The shifting cultivation was put as 12,221 acres.

5. In 1882 Mr. Heath, the Sub-Divisional Officer, was directed to enquire into land tenures. He submitted a full and excellent report in 1884. He divided the 19 Doloiships into four groups. In the first group he put Nartiang, Nongjngi, Mynso, Shiliang-Myntang, Nongphyllut. The second group consisted of Muskut, Jowai, Nongbah, Shangpung, Raliang. In the third group were Amwi, Rambai, Suhtnga and Nongkhlieh. The fourth was Darrang, Nongtalang, Satpator, Lakadong and Narpuh. These are in the War country on the southern slopes He made a fifth group of the four Sirdarships in the low country (Bhoi country) in the north and east inhabited by Mikirs and Kukis. They are now the Doloiships of Bhoi, Mynriang and Saipung.

In the first group was much hali land, both Raj and private property and much shifting cultivation of rice and millet on high land. High land apparently meant all land not hali land.

In the second group there was a larger proportion of hali land.

The third group had no hali land.

The fourth group had groves of betelnut and pan and shifting cultivation of rice and millet. It had no hali land.

The fifth group there was only shifting cultivation by burning jungle (jhum).

Hali land was of two kinds, the first being terraced land to which water was brought by channels from streams, the second being terraced land dependent on rainfall for its water supply. The first kind was cultivated yearly; the second kind after three years of crops was allowed to lie fallow for four or five years. The hali land was either owned by private persons or was Government service land owned by Government but as Government had neglected the lands since the deposition of the Raja, the Dolois, village officials and villagers had cultivated them. The high land was either claimed as private or was Government waste (the latter term was applied by Mr. Heath to all land in which no claim of private right

was made). In groups 1 and 2 he found the claims of private property in high lands were not extensive, as the people had much hali land. Private rights were claimed chiefly in those lands under pine trees. But in groups 3 and 4 where there was no hali, nearly the whole country was claimed by individuals as belonging to them exclusively; the land was poor and the period of fallow was as much as 15 to 20 years. As each family required a large area, the natural result was the division of the whole countryside.

5. The village officials were helpers of the Doloi Their only remuneration was the holding of pieces of land. The number of village officials was settled by village custom from ancient times and they were elected from certain clans. Lands were assigned to them by the Jaintia Rajas. These lands were well known, although it was suspected that some Dolois had sold parts of them. Some Dolois themselves held service lands.

The lands held by puja officials were capable of being ascertained. An example is land held by Kamars (blacksmiths) in return for supplying iron implements for festivals. The Lyngdohs (priests) held land partly for their own benefit and partly to pay expenses of village religious ceremonies.

6. The Raj lands were the private property of the Rajas leased by them to tenants who paid the rents through the Dolois. For the Sanna and Bandhari lands the rents were probably paid through the Sanna or Bandhari to the Doloi.

Some told Mr. Heath that the Raja kept these Raj lands for himself, others said that the Raja allotted them to ladies of his family for their maintenance.

7. The position found by Mr. Heath was the result of years of lack of control. In some villages, the Raj land was held by private individuals; in others the Raj lands were held by minor officials and also by people who were allowed to cultivate by these village officials or elders. In another Doloiship, the Doloi held some of the lands on the plea that he paid the expenses of village ceremonies, the rest of the lands being held by private persons who asserted that they paid expenses of pujas but no such payments were being actually made. In Nongbah what was left of the Raj lands had been rented out by the community, the income being spent on village pujas. The Sanna and Bandhari lands were the private property of the Rajas for whom the Sanna or Bandhari acted as manager or rent collector. Mr. Heath found that the possessors were holding either rent free or on condition of contribution to village pujas.

8. Mr. Heath then made important proposals. If the basis of taxation was to be land revenue, the first difficulty arose about the high land. The recognition among themselves of rights of cultivation in defined areas saved endless disputes, as a man could leave a piece of poor land to lie fallow for years, safe in the knowledge that he could return to it. But large claims made without objection at a time when population was scanty would cause hardship to many or else a system of landlord and tenant when the population increased. New claims were being made continually without check by Government. Since the advent of the British, sales, mortgages and leases had been made of these lands.

Mr. Heath held that to survey all the high lands not claimed by private persons and to claim them as Government land was a fruitless task. The expense would have been very great and recoupment of the expense could only have been made by the introduction of a land revenue system under which all cultivation on these lands would have been surveyed annually and assessed to revenue. As the cultivation of each plot was only for a couple of years followed by a long period of fallow, the task of survey would have to be performed yearly. Such a labour was impossible. A measurement of the Government waste meant also a determination of the private claims to land. Unless a land tax was contemplated on these lands, Mr. Heath considered that an enquiry into these claims would raise discontent without any profit to Government.

He set forth the possible schemes for taxation.

(1) A house tax only.

(2) a general taxation of all cultivated lands.

(3) taxation of the Government hali and high lands with a house tax on those not connected with either or on those who paid less than a certain amount of land revenue.

(4) taxation of all the hali lands and a house tax on those not holding such lands or who paid less than a certain specified amount of land revenue.

As to (1) a house tax is a crude method of taxation, as it falls on rich and poor alike (unless there be classes formed for rich and poor) and the rate must be lowered to the capacity of the poor. But nevertheless Mr. Heath proposed to retain the house tax. As to (2) the task of survey of all cultivated lands especially the land where cultivation shifted to allow for periods of fallow was far too great and expensive. The difficulties have been set forth above.

(3) to the third proposal the same objection on the score of expense of survey applied as to the second scheme.

(4) In this proposal Mr. Heath saw no very great difficulty. He would have had all hali lands, both those claimed as private hali as well as Raj hali, surveyed and assessed to revenue, granting pattas for them. Should the land revenue of any persons amount to less than Rs.2/8/-, (the rate of house tax proposed by him) he would have assessed them to house tax but have given them a rebate for the amount of land tax.

Those who paid Rs.2/8/- or more of land revenue would pay no house tax.

Privately owned hali (called buniaj hali) was to be taxed but could be sold leased or mortgaged by the owners; Government (Raj) hali would be leased to persons who would have no power of sale, mortgage or lease. The present possessors were to have the first offer of settlement. As for land held by village officials, it would be settled with them on the annual lease, the lease to be cancelled on their ceasing to act as officials The Lyngdohs were to be given settlement of their lands. Sanna and Bandhari lands were to be assessed to full tax; lands held by puja officials and puja lands were to be untaxed.

Mr. Heath made one notable statement. He said that the amount of hali land which depended on rainfall for its water bore only a small proportion to the hali for which water channels had been constructed. This is not the case to-day as bone-meal introduced in recent years has caused a great extension of such hali, the bone-meal making it possible to cultivate such land yearly.

9. Government orders were issued in 1884.

The paragraph about high lands is as follows:—

" As to the taxation of Government high land when cultivated, the Chief Commissioner agrees with you that it would be vexatious and unwise to try to assert the Government rights to high lands on which only shifting cultivation takes place. It would require a staff of surveyors and accountants such as you do not possess and could not procure. But it should be made generally known that though Government permits the Syntengs to carry on a shifting cultivation in its high lands without payment, it will not permit any permanent occupation of such lands or admit the growth of private rights in them or pay compensation if such land is taken up for roads or for any other purpose."

The letter then proceeded to approve of the enforcement of the right of Government to Raj hali lands. The Chief Commissioner then said that he did not approve of the suggestion to tax private land as it was better to maintain the principle that the form of direct taxation approved by Government in the Jaintia Hills was a house tax, that a Synteng paying that tax should be charged nothing more for cultivating his own lands, but that any one who permanently occupied Government land must pay a rent in recognition of Government rights.

Land held by persons such as Dolois and village officials in return for services, by Lyngdohs and puja officials was to be held rent free. All other occupants of Government lands were to pay rent.

10. The main difference between the letter of Government and the proposals of Mr. Heath was the decision of Government that private (buniaj) hali should not be assessed to land revenue, because the form of direct taxation was a house tax. As however the Jaintia Raja had held certain hali land as his private property, Government took this land as their own property and charged rent for it. The whole matter is summarised at pages clvii to clx of the Introduction to the Assam Land Revenue Manual, 1906. It is there said that " steps were then commenced to bring the land under a proper system of settlement, the entire (Jaintia Hills) being treated as the absolute property of Government." The Introduction proceeds to say that Mr. Heath ascertained that the following tenures existed, classing all lands either as low (hali) or high.

Hali lands were subdivided by Mr. Heath into (1) Raj, (2) Sanna and Bandhari, (3) Service, (4) Village puja, and (5) Private.

High lands were subdivided by Mr. Heath into (1) Private lands held like hali private lands, (2) Unclaimed land or Government waste.

11. The next document of importance in the history of land tenure is Government letter 4621 R of the 15th September 1892. It said:—" High lands mean, or have always been taken in practice to mean, all land not under hali cultivation, i.e., not under permanent terraced cultivation."

The importance of the definition lies in the fact that there is much valley land, called hali by the villagers, which is cultivated with rice for two years and left fallow for four or five years. It is not permanently cultivated terraced rice land; the difference be-

tween it and Heath's second kind of permanent hali, namely that kind which is not provided with water channels, lies in the lack of permanent and proper terraces. The difference is frequently only a matter of degree.

There is one other pronouncement occurring as a footnote at page clvi of the Introduction to the Assam Land Revenue Manual, 1906, which is worded as follows.—" There is no authority for the statement made at page 177, Vol. VIII of Hunter's Imperial Gazetter, 2nd Edition, that all lands in the Khasi and Jaintia Hills are the absolute property of the cultivators. The Government has never recognised any such right save in the semi-independent states of the Khasi Hills "

12. In 1885 there was an enquiry into the plots of Raj land including sunna and bhandari lands. A staff was sanctioned for survey by pole, but only for four months The survey was completed and a report made in 1886. The total area was 8707 bighas of hali land. The Deputy Commissioner proposed and Government accepted the proposal that hali land which had lain fallow for 12 years should be presumed to be Raj hali. The Subdivisional Officer urged the survey of all the hali land in order to prevent further encroachment on Government hali and to have a regular record of rights. He said the area of private hali might be three times that of the Government hali. Unfortunately the Deputy Commissioner advised Government to wait for a year or two. The wait lasted from 1885 to 1929; during this time a large extension of hali was made without being reported to the revenue authorities and this had to be allowed as private hali in 1929 as the enquiring Officer had no proof that any one plot had come into existence since 1885.

13. In 1886 the forms of Chitha and Jamabandi, etc., were invented. The Dolois were appointed as collectors of revenue, receiving a commission on collections. It is important to notice that the pattas, issued for 10 years, contained the clause that they were not heritable or transferable by sale, gift or otherwise.

The method of dealing with new hali cultivation is of very great importance in the history of land tenure. When an application was received for a lease of " high land " for the purpose of converting it to hali, it was sent to the Doloi for report, who measured it with a twelve-foot pole. If a person claiming to have private rights in the land made an objection, a simple method was adopted. An offer of settlement was made to him in priority to the applicant. If

he refused, the applicant got settlement. The result was that a new hali might be held on Government lease by one person in land to which a bona fide claim as private had been made by another person, and also that one person might hold a new hali under Government lease on land which he claimed as his private " high " land.

The Doloi had also the duty of reporting extensions of hali cultivation for which no applications had been made, technically called " concealed hali." No revenue was assessed upon, and no leases taken for, shifting cultivation on high land and on the intermittently cultivated rice land in the valleys, the latter locally called hali but not officially recognised as permanent hali. But when new and proper permanent terraces were made, the land was recognised as Raj hali and assessed to revenue. As the Dolois had no interest in reporting increases of cultivation save their twenty-per-cent. commission on the collection and were exposed to inducements of villagers to conceal the cultivation, the result was that a large amount of Raj hali escaped assessment and there was continual extension of private hali on land which the villager claimed as private land. In theory, for the extension of this private hali land revenue should have been paid but in practice payment was very often not made.

In spite of these adverse factors, the amount of Raj hali increased. In 1902 it was 10,602 bighas; in 1911, the total was 16,119 bighas and by 1916 it had risen to 18,762 bighas. By 1932, owing to rapid expansion due to bone-meal, discoveries by the amin and the result of the call for claims to private land in 1916, the amount was no less than 27,000 bighas. Service land held by Dolois and village officials in return for public services was 5490 bighas. Requests for a surveying staff were made from time to time but a permanent post was not created until 1918. For a complete survey of Raj hali by one man, about twenty-five years are required. The work is useful for discovery of patches of concealed cultivation and for obtaining accurate measurement, but after fifteen years changes are so many as to make the record of small value both for measurement and for ownership. The decision of what is private (buniaj) and what is Raj hali was not his duty nor was it his business to raise the question.

14. Though the necessity of fixing the area of private (buniaj) hali had long been felt, it was not until 1916 that action was

decided upon. The course adopted was the calling of claims from all persons. Measurement was to be made by the claimants by a twelve-foot pole. Two years were given for the filing of claims. Most unfortunately no officer was available to check the claims until 1928. In these twelve years bone-meal was introduced into the hills, by the use of which rice could be grown annually on land terraced to catch rain-water but without a water channel bringing water from a stream. The class of hali, unfurnished with water channels, of small extent in the time of Mr Heath, expanded enormously.

Owners in 1916 did one of two things. They either limited their claims to the permanent terraced land with good terraces, the construction of which is a very laborious task, or they included in their claim land in valleys which was intermittently cultivated and on which small rough banks or terraces had been rapidly and cheaply made. Hill side land very roughly terraced (a work of a few hours) was also included by many.

By 1929, on this intermittently cultivated land, rice was being grown with bone-meal yearly and terraces had been improved. Some included land which was under purely shifting cultivation, regarding it as private, for in some doloiships most of the land of whatever nature is considered as private.

15. The enquiring officer found that the villagers declared that all terraced land under a yearly rice crop had been in existence for generations. He knew that certain villages had been founded within the last 30 years and that their hali land could not have existed since the time of the Rajas; he also had the statement of Mr. Heath that in 1882, there was no hali in Amwi, Sutnga, Rymbai and Nongkhih doloiships, yet he found much hali, unassessed to revenue and claimed as old buniaj by the people.

There was no doubt that this land had not been assessed owing to the lack of a land revenue staff during all these years but the officer had no proof that any single piece of hali was of a recent date because no villager would give information.

Apprehension arose that Government would make wide claims and in order to allay this Government gave notice that it was not their intention to make Raj hali what had been long allowed as private hali.

The result was that all claims made in 1916-18 were admitted without question, the only conditions being that the land was under

permanent rice cultivation and that the area found was not more than twenty per cent. greater than that reported in 1916-18, this percentage being allowed to cover errors in area calculation by owners.

It might be supposed that this decision would have made the people content, but large numbers protested.

Many villagers had measured in 1916-18 only the permanently cultivated terraced land which had been accepted as within the definition of buniaj hali for many years by revenue officers. Others included the land on which they at times cultivated rice, making small rough temporary banks to contain the water. On much of this bone-meal had been used between 1918 and 1929, enabling cultivation to be constant. The enquiring officer allowed as buniaj the amount under constant yearly cultivation only.

The first class of claimants, who had limited their demands to the permanent hali, found that the second class had obtained advantages; the second class protested that not only the yearly cultivated land was hali but that land intermittently cultivated with rice was hali as the term hali had been used by the villagers to describe this class of land also; they called the land buniaj (private), for much of the land throughout the Jaintia Hills had been inherited or purchased from others under the name of buniaj; they wished to claim all extensions cultivated since 1918.

16. Government orders were issued in 1933. An allowance of 33⅓% in area was given to cover any margin of error in calculation due to the rough method of measurement by owners.

The letter then proceeds as follows:—

" (2) What lands should be classed as Buniaj hali? The Governor in Council understands that the term ' Buniaj hali," as used in the Jowai Sub-division, is applied to lands which, from olden times, have been under permanent terraced wet rice cultivation and have hitherto been excluded from direct assessment to land revenue.

In the years 1916-18 all persons who claimed to hold " Buniaj hali " were required to file their claims. The Governor in Council is informed that, during the present enquiries, claims made in 1916-18 have been admitted freely wherever the lands were on local enquiry found to be under permanent terraced wet-rice cultivation. That being so, the claims of the " Buniaj hali " holders would

appear to have been provided for fully, though in fact it is known that large areas of " hali " now classed as " Buniaj hali " by the enquiring officer have only come into existence in recent times.

(8) The remaining issue is whether claims put forward in 1928-31, which are not covered by claims made in 1916-18, should be allowed.

The Deputy Commissioner, in his proposals, has suggested that, in respect of claims not made in 1916-18, he be permitted to exercise his discretion and to admit claims which in his opinion are supported by satisfactory documents. Under the term " satisfactory documents " the Deputy Commissioner proposes to include:—

(i) cases in which the Sub-divisional Officer or Deputy Commissioner has in the past specifically directed that the land should be excluded from " Raj hali " and regarded as " Buniaj hali."

(ii) cases in which the Sub-divisional Officer, sitting as a civil court, or the Deputy Commissioner on appeal, has in a suit between parties awarded to one party or the other land mutually claimed as " Buniaj hali," although no specific finding as to its character may have been recorded.

With regard to the first class of cases the Governor in Council agrees that recognition of the land as " Buniaj hali " cannot now be refused.

With regard to the second class, the Deputy Commissioner has correctly pointed out that an adjudication between two parties by a Civil Court though presided over by a Government officer, is not binding against Government, where Government is not a party to the suit. The Governor in Council however understands that these cases are not very numerous, and is prepared as an act of grace—to allow the concession which the Deputy Commissioner has recommended.

The enquiries recently made have shown that the allegation apparently advanced in some quarters—that the papers relating to some claims made in 1916-18 are not now forthcoming, is not supported by facts. These enquiries indicate that in response to widely published notifications claims were made in 1916-18 for all " hali " land which was then really " buniaj hali." If there do exist exceptions to this, they are rare and impossible to discover.

3. It must however be clearly understood that in issuing these orders Government in no way commit themselves to the view that " buniaj hali " land in Jowai Sub-Division shall continue in per-

petuity to be entirely exempt from direct assessment to land revenue. There are indications that in the land revenue administration of the Jowai Sub-division in the past the interests of Government have not been as adequately safeguarded as they might have been. Government reserve to themselves the right to bring the whole question under review on the expiry of the current settlement or at such later date as they may deem fit."

The final orders of Government upon all of the immense number of appeals have not been passed, but the enquiry is expected to add nearly ten thousand bighas to the area of Raj hali.

17. (1) The chief peculiarity of the land system arises from the holding of "high land" (i.e., land which is not hali) in private possession. This is bought and sold and mortgaged by registered documents and cases of inheritance are brought before the Courts. Within an area held as 'private' the cultivation may be shifting, but the orange groves in the War country are permanent. When persons converted a portion of such land into a terraced rice field, they in many cases applied to the Sub-Divisional Officer for a patta according to the rule described in paragraph 18 above, but in many cases they did not, regarding the whole land as private 'buniaj.' Extensions of cultivation since 1918 on such land have been assessed to land tax as a result of the recent enquiry. This is the real cause of dissatisfaction, but one with which the persons who have been paying tax on halis do not have sympathy.

(2) The main taxation was pronounced by the Chief Commissioner in 1884 to be the house tax.

This is barely true to-day. In 1933-34 the house tax amounted to 32,758 rupees and the hali tax after addition of the 9800 bighas discovered and assessed at the enquiry of 1929-33 will be over 26,000 rupees. The burden of land revenue is borne wholly by people who have opened halis in the last fifty years, when such opening has been reported by the very inadequate staff. The most fertile land, the buniaj hali, a good deal being sublet, pays at present nothing. The payers of hali revenue are also liable to house tax. This is not always unfair as persons in villages where there is much hali are more prosperous than those in villages where there is little or none, yet to this there is an exception in the Bhoi country where there is hali but people are poor.

The proposal of Mr. Health in 1884 that there should be a rebate in cases where both house tax and hali revenue is paid will possibly

be examined in future. The house tax may be said to be a land tax for cultivation of high land, while the hali tax is an additional tax on this special kind of cultivation. But where a village cultivates entirely by hali and uses the high land only for growing of pine trees, the people are doubly taxed as compared with a village where there is no hali. The village whose people had hali in old days was undoubtedly much more prosperous than the village which had none, but the difference is not so great now that cultivation of hali without water channels, by means of bone-meal, is widely practised. There are difficulties in a simple proposal for a total rebate of house tax when hali revenue is paid, but the question deserves examination, as the incidence of taxation upon upland villages where there is much Raj hali and upon the War country where there is none is not at present equal.

In the War villages, where there is no hali, no revenue is paid on the fruit, betel-nut and pan groves whose owners are often very well-to-do.

The single rate of house tax is inequitable but Government has so far rejected recommendations for more than one rate for the cogent reason that assessment by village officials will be by favour rather than justice.

There is a device, not hitherto considered, by which Government interests at least will not suffer and that is the fixing of a unit rate for a village and the collection of the total sum so fixed. There can be classes, but the deficiency caused by a number of houses paying less than the standard rate must be made up by payments at higher rates by the more prosperous householders.

(3) Classification and assessment of hali land at rates varying according to its fertility is a necessity of the immediate future; waterless hali cultivated by bone-meal, a class of land that has come into existence only in the last twenty years, is of much less value than the old style of hali.

(4) The continuance of total exemption of buniaj hali from taxation is likely to be considered as unfair by the majority of the people. The exemption is due to the old land system in the times when the country was under the Jaintia Raja. He could not tax land just as no other Khasi Chief can tax land. But under the British administration a system of taxing land has grown up, though it has not been applied fully, with the result that the burden is not evenly distributed.

The buniaj halis ought to be heritable and transferable, whatever be decided about their taxation. The present leases for Government halis are for ten years (principally in order to allow of the imposition of higher or lower rates at the end of the period of settlement), and contain the clause that they are not heritable or transferable by sale, gift or otherwise. In practice inheritance is always permitted.

This clause prevents in theory the growth of a landlord class which has unfortunately come into existence on the buniaj halis, many of which are sublet at high rentals. The clause is perhaps not very satisfactory for cases where a hali has been constructed and a water channel provided with great labour.

(5) In the War country a survey of the fruit and nut groves in the jungle on the steep mountain sides would be very arduous and expensive and recording of subsequent alterations due to division of property or expansion of cultivation would be no less difficult to make and control. So whatever may be the decision as to the status of land holders, taxation of land in that part is not probable in the near future.

CHAPTER XIII.

LAND TENURE IN THE STATES.

(By Mr. DAVID ROY, Assam Civil Service).

PART I.

1. Lands come under two main divisions:—

Class A—Ri Kynti. Class B—Ri Raid.

Ri=land, Kynti=possession, land in absolute possession.

Ri=land, Raid=community, land for the community.

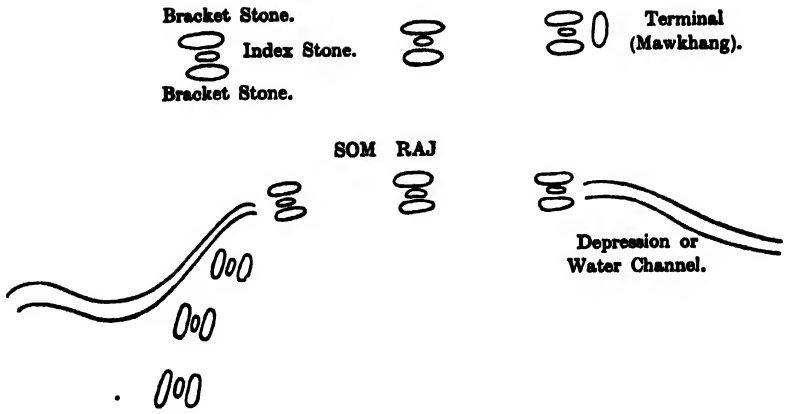
2. In the administration of the country we find three classes of people,—(1) the Siems, Lyngdohs, Wahadadars, Sirdars; (2) the Lyngskors, Myntris, Basans, Dallois; and (3) the Raid.

The Lyngskors and the Myntris are the Bakhraws. These are the people who belong to the powerful clans. With them we have the Basans and Dallois. These people elect a Siem or a Chief. There are certain acts or duties which the Bakhraws cannot under-

take, certain property which the Bakhraws cannot receive or administer. For example, the arrest and roping or chaining of an accused, the corporal punishment of a convict, are matters of the State, for these purposes the Siem is elected. There are the religious ceremonies of the states, the care of the people who are " Iapduh Iaptan," people who die without " kurs " (relatives). The Lyngdoh is elected to perform these ceremonies of the States and to take care of the bones of these "Iapduh" people. Thus we find some of the States with the Lyngdoh only as their head.

The Bakhraws with the Siem and the Lyngdoh form the Durbar of the Hima (State Durbar). This is the highest court or controlling power of the State. The important point in the land system of the States is that the State cannot demand a land tax from its subjects.

8. The " Bakhraw " or leading families or clans came and occupied lands won or obtained by them. The lands occupied and distributed as absolute possessions became the Ri Kynti lands of those families. They are heritable and transferable at will. These lands are demarcated by stones and land marks. In the uplands of the Sadar Sub-division we find stones called Mawbri (stones to indicate landed property). These Mawbri stones have two bracket stones and an index or pointer stone. The index stone is known as the Mawthylliej. At the junction of one Ri Kynti with another there is a termination stone called Mawkhang. When the boundary of one Ri Kynti marches with another Ri Kynti over a piece of land forming one composite block, we find two sets of boundary stones placed to indicate the boundary between the two. Sometimes the two sets of stones are placed side by side, sometimes they are placed a little apart and the intervening land belongs to nobody, it is reserved as boundary land and is called Som Raj. In certain cases only one set of stones serves to indicate the boundary until it comes to the end of the land where the boundary stones would have a Mawkhang. If in its course before it reaches its terminal point, the boundary meets with a water course or natural depression the index stone would be adjusted to indicate the direction of the boundary line into that channel, depression, river or drain. The boundary would then continue along that natural feature without, in most cases, the help of boundary stones. The rough sketch below may help to illustrate what I have said:



4. Other lands not distributed or occupied as absolute possessions, Ri Kynti, by clans are classed as Raid lands. These Raid lands are not defined by stones or boundary stones as described for the Ri Kyntis.

5. The Ri Kyntis and the undivided land which come under the control of the Bakhraws are called Ka It Ka Hima.

The word Ka It means the border, extent. Ka Hima means State. Thus the phrase " Ka It Ka Hima " means the State with its border and extent.

We have seen that within Ka It Ka Hima there are the Ri Kyntis and the undivided land. In the undivided land in Ka It Ka Hima there are houses and villages which need land for cultivation and other purposes. For these houses and villages, lands are therefore reserved for their needs as common lands. These are called Raid lands.

Raid lands, as has been said, have not got boundary stones like Ri Kynti lands.

These villages pay contribution and render help to Ka It Ka Hima (State) of the Bakhraws when needed. Within the border and extent of the Hima there are parts or portions called Ka Shnat or Ka Kuna. Within Ka Shnat or Kuna there are the durbars of the Bakhraws of that Shnat or Kuna. From these durbars, references and appeals are made to the Durbar Hima (State Durbar).

Ri Kynti and Ri Raid in the Shnat or Kuna come under the durbar of the Shnat or Kuna, but are under the supreme authority of the durbar of Ka Hima (Durbar Hima).

6. Under the two main classes of lands above described come lands distinguished by different names, which names serve to indicate the purpose or the idea for which they are held or maintained.

A. Ri Kynti—Ri Khurid—Ri Tymmen—Ri Iapduh.

In Ri Kynti the owners are in absolute possession. They can sell, mortgage, lease and dispose of it in any manner that they deem fit.

Ri Khurid—the word " Khurid " apparently is the corruption of the Hindustani which means " bought, ' and so Ri Khurid means Ri Kynti obtained by purchase.

Ri Tymmen is Ri Kynti of ancestry.

Ri Iapduh is land owned by a family which has become extinct. These lands lapse to the State.

B Ri Raid.

In the undivided land we find Ri Raid which is land for the use of the people of the village or villages. We have Raid lands which go by such names as—

(1) Raid Hima which means lands where all the subjects of the State are entitled to cultivate or cut wood or graze their cattle.

(2) Raid Lyngdoh, lands the occupiers of which have a Lyngdoh or priest of their own and their own set of religious rites and ceremonies.

(3) Raid Shnong, lands where villages are situated.

(4) Raid Umsnam, lands won by the sword.

In these Raid lands we have—

(i) Law Lyngdoh which is a sacred forest reserved for the ceremonies of the people who have a Lyngdoh.

(ii) Law adong
(iii) Law kyntang } These are lands kept reserved for the requirements of villages. Timber for building purposes, wood for cremation purposes, trees needed for certain State religious or other purposes, are obtained from here.

People can occupy a raid land where they build their houses and cultivate. For an ordinary homestead not much land is required for a house and its garden (kper). For cultivation purposes land not more than can be cultivated is taken. The occupant can sell his house and the site and garden of his house or paddy-field or grove; but the sale does not extend to anything more than his right of

occupancy. He cannot sell it as a Ri Kynti. Thus we find the phrases " Siew bai lut " " Siew bai luksan " which means paying for the labour and expense incurred in the making of the site and the garden. Any site, garden or place of cultivation if abandoned by the occupier can be taken up by another. As the method of cultivation is mostly by jhuming, the occupier has a right to let his land lie fallow for a period and return to it again. If he does not return at the end of that period, it is taken that he has abandoned it and the land is free for another to take. This period varies from two to three years or more in various places.

7. The other names such as Ri Khain, Ri Duwar, Ri Bam Siem, Ri Seng are names of lands found in some of the States which are either owned by clans or families or given to Siems or families and come more or less within the definition of Ri Kynti or Ri Raid according to the history which attaches to each of these lands in the localities where they are situated. Certain classes of Raid land are considered to be connected with the ruling Siem in a closer relationship than ordinary Raid land.

The most important class is Ri Seng lands. These Ri Seng lands are found in the War villages. They are pieces of land at one time occupied or in the possession of some person or persons. This person or persons do not divide the land among their descendants but keep on cultivating there, and so do their descendants. All persons, males and females, descended from the first person or persons who first occupied or possessed the lands are called Seng people with regard to that land, and all descendants who can prove that they are ' Bit Seng.' To prove this one requires great knowledge of the history of the founders and of the descendants; hence they have a Seng Durbar to manage the Seng land and to hear claims of ' Bit Seng,' and decide about the ' Ing Seng ' (Seng House).

For Seng purposes contributions called in certain places " Wirs " are necessary, and descendants or families who do not contribute are prohibited from cultivating in the land or sharing in the profits arising of their Seng lands. This prohibition is called ' Khang apot ' which is removed as soon as the person at fault pays the " Wir."

8. The Ing Khadduh is the place of the family sacrifices and the youngest daughter is the keeper of the Ing Khadduh and takes the leading part in the family sacrifices and ceremonies of which the collection of the bones of the dead is an important one. In the

Ing Khadduh, too, all ' Kurs ' (relatives) can seek shelter in times of difficulty or adversity. So we find Ri Kynti is left in the custody of the Ing Khadduh for these purposes. Amongst the Wars they leave a grove called " Ri Shieng " with the youngest daughter who will be keeper of the family ceremonies and bones. Besides " Ri Shieng " there is also a grove given to the sisters jointly or the youngest daughter, called " Ri Phniang," for the purpose of a family safeguard in times of difficulty or if anyone has to depend on the sisters for help and maintenance

9. Nowadays, as land is becoming more valuable owing to increase of population and easier disposal of crops by better transport, there is a growing tendency for persons to occupy and claim as much Raid land as they can. In the old days for an ordinary homestead not much land was required and for cultivation purposes land not more than could be cultivated by a single person or family would be taken up. At present people possessing ready cash are apt to enclose big areas in a Raid land to the exclusion of everybody else in the village. There are instances where even mud or stone walls are erected right round the areas, and instead of ordinary cultivation, pine trees are grown, and the areas with the trees kept as their private reserves and regarded as in their absolute possession, with a right to cultivate there and sell the trees therefrom and then grow trees again as in Ri Kyntis. Thus Raid land is converted into private possession similar to Ri Kyntis.

In the areas nearer Shillong where land fetches high prices certain heads of villages have tried to claim that Raid Durbars have a right to sell Raid lands and give this land to people as Ri kynti. From the description of Ri Raid it has been clearly shown that Ri Raid is the undivided land without boundary stones kept for the use of the people of the village or villages in the Raid. If this right of the people is allowed to be usurped by people who have the means to enclose large pieces of this common land, or by a durbar of certain headmen who happen to be the leaders of the villages for the time, the existence of Raid lands will soon be a thing of the past, and poorer people of the villages will become tenants or hired labourers of the few rich people or of the heads of the villages in the land which by right belongs to them. The Deputy Commissioner in a recent case, (Misc. Pol. Case No. 20 of 1938) has decided that there is no power of the Siem and his Durbar or of the Raid Durbar or headmen of a village to create Ri Kynti and that the Raid durbar has no power to sell Ri Raid.

The Mawlat case, which ended in 1920, can not be taken as any authority. When land is taken or occupied by the British Government the transaction is of a special nature.

A great deal of evidence was taken in the Mawbuh case, Pol. case No. 2 of 1916, of a very conflicting kind. The case is quoted below in regard to leasing. The most reliable evidence given was that a Raid or village durbar had no power to sell without consent of the Chief of the State and his Durbar. It is very doubtful whether there is any power of sale at all.

There is an argument that although the land is not the property of the Chief and his Durbar yet it is the property of the people and the people of each Raid or village are absolute owners of the Raid land and can do as they please with it. This argument must be resisted. The present generation has no right to sell the rights of future generations. The Raid land is common land and cannot be alienated.

10. Leasing.

The Raid land of the State of Mylliem in Shillong has been leased to foreigners for house building.

In the interior, as has been said in a previous chapter, Chiefs have tried to lease Ri Raid. An example is the Mawbuh case, Pol. No. 2 of 1916. The Siems of Mylliem, U Hain Manik and U Ron Sing thereafter, had actually taken considerable sums for a number of years from Khasi cultivators of land which their successor U Kmuin Manik claimed, in the case, as Ri Raid, obtained by conquest; the other party, the six clans, contended that the Mawbuh Raid land had been purchased by them and held like a Ri kynti, managed by their Raid durbar. Some of the evidence on the Siem's side was given to show that the Siem had power to lease, but there was also evidence that Ri Raid cannot be leased.

The Deputy Commissioner held that the land was Ri Raid and not private land and that the cash payments by cultivators, at so much per thiar (a measure of paddy), were not rent (bai wai) but contributions for the public good of the Mawbuh Raj and he allowed levy of them on occasions.

It is to be remembered, (to quote the words of Mr. Lainé, Deputy Commissioner, in another case) that certain classes of Raj land are considered to be in a closer relationship with the ruling Siem than ordinary Raj (Raid) land. Such can be used for support of the Siem, but each case has its own history.

The Mawmluh case, referred to in Chapter XV, laid down that rent (but merely a quit rent) could be taken only if the cultivators declined to recognise the jurisdiction of the Siem and pay pynshok or customary contribution.

11. The amount of gradual encroachment on Raid land by persons who claim as Ri kynti is unknown but may be considerable. Cases come to light at times, for example in a recent inter-State boundary dispute, a person claimed a large tract as his own land presented to him by the Siem of the neighbouring State because of services rendered. The inter-State boundary was fixed across the land, so the matter was brought up.

12. There have been troublesome disputes about the respective rights of a Chief with his State Durbar on the one hand and the village headman, Raid headmen or Raid durbar on the other hand in the management of Raid land and village forests. The most satisfactory policy is that the village headmen or Raid durbar should see to the distribution of Raid land among occupants but the Chief and his Durbar have a duty of superintendence and are the appellate authority.

The special forests reserved by order of Government in 1874 and afterwards were placed under the management of the Chiefs of the State. The village forests are managed by the village headmen. The Chief and his Durbar have a power of superintendence to see that the management is for the benefit of the village concerned.

PART II.

GRAZING.

In the last census report, attention was drawn by Mr. Mullan, I.C.S., to the increase of Nepalis. After allowance for another battalion of Gurka Rifles, for labourers in Shillong and on the Government roads, there must be a considerable increase in the graziers in the States.

The Chiefs get revenue from them and are apt to encourage the settlement of as many as possible in their territories without regard to the destruction of forest, the loss of fertility of land owing to overgrazing and the damage to crops of their subjects by buffaloes. In

Nongstoin on the plateau above Sylhet, the bareness of the lands must be a cause of sudden flooding of rivers and consequent damage to the crops in Sylhet.

For grazing on Ri kynti in Rambrai, Myriaw and Nongstoin the Siems get one-third of the tax per head of cattle and the land owners two-thirds, in Nongkhlaw the Siem gets the whole by a judgment of the Commissioner in Civil Appeal No. 1 of 1921, the reason for the decision being that the Siem had been used to take the whole. The matter is now under consideration by the State Durbar as Ri Kynti owners are not content with this practice. For grazing on Raj land (Ri Raid), the Siems get the tax. In the War villages, the proceeds are part of the village revenue and may be allotted to the Sirdar for his maintenance or be shared by village headmen or used for public purposes according to a decision of the village durbar.

2. In the chapter on territorial jurisdiction of the Chiefs and in that on land tenure in the States it was said that the Chiefs have no right of leasing Ri Raid. Grazing tax is a profit on Ri Raid and of late disputes have arisen whether the Chief or the inhabitants of a village or collection of villages should get the tax for grazing on Ri Raid.

In the chapter on land tenure, the remark was made that by old Khasi theory the Chief should get sufficient to maintain himself and the female members of the Siem clan and to defray small State expenses. In no States save in Mylliem and Khyrim is State income sufficient for expenditure upon anything save the most primitive public needs, such as wages of Myntris and some menials. That the Provincial Government under the changed Constitution will continue to maintain certain public services is uncertain: also the State authorities will need funds in future as their subjects will demand more public services. Deprivation of any source of revenue is therefore a serious matter.

3. Even if the claims of each village or raid have support in old theory, the practical results of control by each village have to be considered. The graziers may have their huts in one village or raid and pay their tax to it but their buffaloes wander untended and may graze on the land of other villages and also damage their crops.

Of late some of the raids of Mylliem are claiming Civil and Criminal jurisdiction as well as rights to revenue, in fact desiring

to set up small States within a State. Conflicts with the Central State authority have arisen about grazing. Although the Siem and his Durbar have the power of superintendence over all villages, exercise of that power is only too often possible by applications to the Deputy Commissioner. The Siems have little control over Nepalis, whom they cannot try in their Durbar as they are not their subjects; they have trouble in collecting the tax and apply to the Deputy Commissioner, either by petition or by a Civil suit, to aid them in realisation. So powerful are the graziers in some small States that they would threaten its stability unless kept in order by the Deputy Commissioner.

Operations by village or Raid durbars are, therefore, certain to cause endless trouble between the State Durbar and the Raid Durbar and between neighbouring Raid Durbars. The Deputy Commissioner will be expected to settle all these disputes and to collect the tax also in many cases. The situation would be impossible.

4. One main principle seems proper to be laid down, that the village people have the right to say whether graziers should be allowed on the Raj lands used by them for cultivation. The words " used by them for cultivation " have been added because of the difficulty when a State has been, in theory or practice, divided into Raids. In these Raids there may be much forest and waste land; inhabitants may even live by jhuming, shifting their villages every few years. A right to prevent grazing upon all of this land would result in the entire stoppage of grazing in the State; it would probably be used as a lever to compel the Chief to share the grazing fees, just as owners or Ri Kynti divide the proceeds with the Siems in some State.

5. The formation of grazing reserves is being suggested to the Chiefs but it is unknown how far the problem is susceptible of treatment on these lines as no compact areas may be discoverable. The forbidding of any Nepali graziers settling outside these areas would follow.

The placing of the entire control of grazing in the hands of the Deputy Commissioner who would employ a staff to collect the taxes, deducting a percentage for the cost of collection, and who would fix the areas for grazing and control the number of cattle and of graziers therein, would benefit the people of the States and prevent the destruction of forest and deterioration of soil. To this, the

Chiefs are unlikely to agree voluntarily. The formation of reserves and the restriction of Nepalis to these reserves by order of the Deputy Commissioner is, provided it be possible, a less drastic remedy for a situation which is not only eventually harmful to the agriculturists of the States but certain to cause internal conflicts.

CHAPTER XIV.

LAND TENURE IN THE BRITISH PORTIONS OF THE SADAR SUBDIVISION.

In Shillong and Cherrapunjee land is settled by special leases or under regular periodic settlements. In villages there is no land tax, but only a house tax. No general enquiry has been made into claims to Ri Kynti and the only known pronouncement by Government is at page clvi of the introduction to the Assam Land Revenue Manual, 1906, (reproduced at page cxii of the 1931 edition) where is found the statement that Government is the proprietor of the soil, together with a footnote that " There is no authority for the statement made at page 177, Vol. VIII of Hunter's Imperial Gazetteer, 2nd Edition, that all lands in the Khasi and Jaintia Hills are the absolute property of the cultivators. The Government has never recognised any such right except in the semi-independent states of the Khasi Hills."

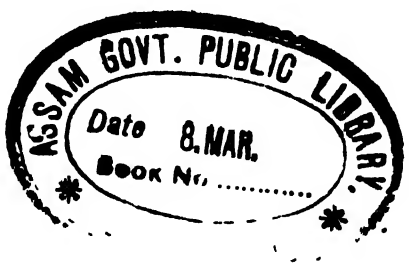
The people themselves use the terms Ri Kynti and Ri Raid. The Sirdar and headmen arrange the cultivation in the common land. Enclosure of large areas by walls on the plea that each year a portion of the fallow enclosed is needed for shifting cultivation is a new practice. It has been mentioned in paragraph 9 of Chapter XIV. This leads to a claim of ownership and to the leasing and sale of the fallow land. If the practice be not stopped by the district officer the common land will disappear.

Claims to Ri Kynti have been made and considered but discussion of the different views taken in the cases about the proper treatment of such claims is not advisable as no view is authoritative. If the land claimed is really needed for the cultivation of a family or clan, other villagers refrain from entering upon it. The question is most likely to arise in cases where only a few members of a clan

remain in a village at the present day, claiming a large area as Ri Kynti and the other villagers have not enough land. The only remark permissible here is that before any general decision an enquiry into the amount of land so claimed in the British territory of the Sadar Subdivision is advisable. If much is so claimed, the result of admission upon the welfare of other villagers ought to be considered. Whether the nature of the tenure, if admitted, would be a heritable and transferable right of occupancy or any higher status has not been examined.

Permanent cultivation, such as pynthor (terraced rice fields) and kper (garden land or annually manured and cropped land) remains with the holders who transmit and dispose of it as they wish; so with groves in the War country. Land is being sold (dio noh), mortgaged (deh bynda) or leased (ai wai).

The subject of land tenure is capable of treatment at length, but discussion and argument are unsuitable in a matter in which Government has not ordered any enquiry.



PART III.

CHAPTER XV.

TERRITORIAL JURISDICTION OF THE CHIEFS OF STATES.

In 1874, in the case of the Siem of Mawsynram versus the Siem of Maharam, Colonel Bivar, Deputy Commissioner, an officer of great experience, wrote:—

"As the Khasi Chiefs are not territorial sovereigns but democratic Chiefs, whose authority is over the subjects and not over the lands, properly speaking they cannot assert territorial limits, but their jurisdiction extends over villages and the boundaries of such localities constitute the confines of their respective rule"

A large area was claimed by both Siems. He found that the inhabitants of the villages paid allegiance to the Siem of Maharam. He gave to the Siem of Maharam as much of the country as was used for shifting cultivation by these villages. For boundaries of the land natural features, rivers for preference, were taken. In one part there was land, not then cultivated at all by any village. No award was made by him of this land: it was to be the subject of many cases in the years to come.

This has been the general method followed since that time. No settlement of boundaries has been made unless a dispute arose and no final settlement of boundaries of all States in one operation has been attempted.

REASONS FOR THE POLICY.

By tradition, the Khasis came from the eastern country, now the Jaintia Hills, and spread over the land. As none of the Siems can trace back their ancestry very far, some have the opinion that they are all of more recent origin than the settlement in the western hills; for example, the Siems of Nongkhlaw came from the Jaintia country. The Lyngdohs (priests), who are still rulers in some States instead of Siems, may be older.

The fact that Ri Kynti (private land) is not under control of the Siems is thought by some to show that the Siems were created after the division of land and that groups of villages chose a Chief or Siem by voluntary association.

Later tradition is full of rebellions against Siems, division of territory, founding and destruction of villages, e.g., the founding of Laitkynsew (vide the account in Ki Dienjat jong ki long Mynshuwa. Don Bosco Press 1980).

As the people spread to the empty places in the hills, the boundaries of a State would widen.

The States were usually compact because of the need for mutual protection against enemies; founding of a village in the midst of the territory of another State, at a distance from the parent State, and resistance to the authority of that other State could not have happened before the advent of the British. But unless a natural feature such as a river or hill was a boundary between two States, any Chief would have to go round the land cultivated by his subjects in order to find where the exact boundary lay at any one time.

He would prefer to leave his boundaries vague, so as to claim more land when his people required it.

SOVEREIGNTY RIGHTS WITHIN BOUNDARIES.

In recent times the claim has been made by Khasis, who migrate from one State to another, that residence in another State does not bring them under the judicial authority of the Chief of that State.

These claims have become very insistent in the town of Shillong, where there is a large body of such persons, who do not in fact submit to the judicial authority of the Siem of Mylliem and cases of great difficulty have arisen of late.

By clause II of the Sanads the Chiefs have been deprived of power to try persons who are not their own subjects. There is a vague idea that clause II embodies some ancient custom. No reason for such an idea is discoverable. The words used by Colonel Bivar did not refer to judicial power. He made his meaning clear in the case in 1874 of U. Ram Khasi on behalf of the Siem of Khyrim v. U Mon Lalu of Jowai, a British subject, "To obtain land tax from him for holding land for cultivation." He said—" It is to be observed that the Chiefs in the Khasi Hills States are not territorial sovereigns but elected democratic Chiefs and that they have no right whatever to the soil. Lands in the Khasi Hills, belonging to the children of the soil, are the property of the owner, for right to which he is answerable to no Chief and for which he pays no land tax of whatever nature and the only person who can demand rent

for land is a proprietor who does as he thinks fit with his own and is subject to no control in respect of it. A Chief . . . is not a zemindar, he is, as I have said before, a democratic ruler and as such his power extends to the subjects and not to the soil. A State land tax is an unknown thing amongst the democratic subjects of the Khasi Hills States and as regards land and rights thereto the Chief is just on the same footing as any other individual of the commonwealth."

The Chief Commissioner in upholding the decision of Colonel Bivar said:—" Of late years it is admitted that the Chiefs have began to assume territorial jurisdiction and have been encouraged in so doing by the British Government. But their acquiring territorial limits has clearly not yet entitled them to demand rent or land revenue from those who hold the land within those limits."

The difficulty experienced at present is entirely the creation of the Sanads; words used by Colonel Bivar when he considered either the boundaries of States or a demand for land tax should not be quoted as evidence that the Chiefs in ancient days lacked jurisdiction over any person within their borders.

The use of the word ' subject ' in dealing with subjection to authority is also a source of confusion. Citizenship and subjection to the authority of a State are different things.

Mr. Mills, Deputy Commissioner of the Naga Hills, an authority on tribal law, says that the underlying idea of Indonesian sovereignty is protection, that a Chief protects certain people and in return for this protection he is entitled to obedience and certain dues.

There is always a tendency for a protective claim to be made over subjects who have gone to distant places. But this is adminstratively impossible. The only solution, in his opinion, is to lay down territorial limits within which this protective power can be exercised. The State or any Indonesian Chief is not landlord of the land within his jurisdiction. But the Courts should not confuse proprietary rights over land with protective rights over areas. All living in a State should be under the authority of the Chief of the State.

In 1907 the Commissioner, Mr. Arbuthnott, noted for the information of Government in U. Bajur's case, (the note was quoted with approval by the Commissioner in Political appeal cases 19 & 21 of 1928 and again by the Governor in Council in the Cherra versus Mawmluh case of 1929) that a Khasi settler in another State must submit to the jurisdiction of the Siem of that State and pay pynshok (the customary contribution for State purposes paid to the Siem as head of the State).

He said—" This land (Raj land) is available for subjects who have no lands of their own or settlers from other States whom it is desirable to encourage. Such outside settlers become in Khasi phrase khun ki hajar, i.e., subjects. The term khun-soh-Siem is applied to subjects who belong to another Chief or State."

Again—" It is not customary to levy rent. A Khasi settler in the pre-British days who refused to pay pynshok would have been summarily ejected by the Siem and it is unlikely that such cases would have arisen with a summary remedy at hand."

The actual judgment in U Bajur's case was based on the special point that U Bajur having taken a lease of Raj land from the Siem could not be allowed to repudiate the obligation to pay rent.

In Political case No. 2 of 1922, Ka Myrshiah versus U Rihin Sing, Rai Bahadur Dahory Ropmay, a Magistrate of great experience, noted that Khasi aliens who occupy Raj land must pay pynshok and discharge other duties of the people of the State,—otherwise in pre-British days they would have been summarily ejected. To occupy Raj land is to exercise a right of citizenship and a person doing so must discharge the obligations of citizenship.

The same learned Magistrate in U Raimohon's case in 1923, noted that a Khasi alien is fully entitled to the possession and enjoyment of Raj land once he has been allowed to occupy it, provided he pays pynshok and submits to the jurisdiction of the Siem. (Raj land is Ri Raid in Khasi.)

The latest case which has a bearing on territorial jurisdiction is D.C.'s Pol. Case II of 1929, the Siem of Cherra versus the Sirdar of Mawmluh.

A boundary dispute between the States had been decided in 1917. By 1927 it was found that people of Mawmluh had been cultivating land which had been given to Cherra in 1917. The decision of 1917 was upheld in 1927. A claim for rent was made by the Siem of Cherra as the people of Mawmluh declared the land was necessary for their subsistence and continued to cultivate.

The Deputy Commissioner and Commissioner decided that the Siem could levy the customary State contribution (pynshok or khrong) at times when he made the levy from his own subjects, but not land rent. The Governor in Council set aside these decisions and passed orders that people of Mawmluh who desired to cultivate in Cherra State must either pay the customary State contribution or, if they refused, must pay quit rent for the land.

The decision may be open to criticism upon the question of right to impose a land tax, but it laid down correctly that if a State boundary has been fixed, a non-subject who occupies land within the State must acknowledge the authority over that land of the Chief and Durbar of that State.

The difficulty now experienced about judicial authority is wholly caused by Clause II of the Sanads, possibly by a wrong interpretation of its meaning, and amendment of Clause II of the Sanads, if amendment be needed, by way of giving judicial authority to Chiefs over residents within a State cannot be resisted by an appeal to Khasi history or theory of sovereignty. The question will be examined in Chapter XVIII.

METHODS OF DECISION OF BOUNDARY DISPUTES.

As in ancient days the boundaries of States fluctuated, so, in the long series of decisions of boundary disputes a conflict in the mind of the deciding authority can often be seen between the theory that the people should retain their allegiance to their parent State and the theory that immigrants into a State should obey the Chief who had been exercising authority over the land before they came to it.

The former method would appear at first sight to be more favourable to peace, in view of the ancient ideas of the Khasi race, but it has not always proved to be so.

In 1882 Colonel Clarke, then Deputy Commissioner, decided that the small village of Laitsohum, consisting of immigrants from the Sirdarship of Nonglywai, many miles away, into what to all appearances must have been the territory of Mawsynram State, should continue as subjects of their old Sirdar as they wished to so remain. Nearly forty years after when case after case about the boundary was being filed the Siem of Mawsynram, in an unguarded moment, wrote that if these people acknowledged his authority, boundary disputes would cease.

Although the use of instruments of precision for map-making will be recommended below for a more permanent settlement and removal of excuses for disputes, yet the surveyor's chain is powerless to confine human hearts.

It is when decisions have as their subject pieces of waste land in which two villages of different States have begun to cultivate and dispute that they are most acceptable and cause least bitterness.

When changes of allegiance are involved, the decisions may turn on very fine points. An instructive instance is the full judgment of Mr. Hezlett, Commissioner of the Surma Valley and Hill Districts in Political Appeals 18 and 21 of 1928, in disputes over two villages claimed by the Siem of Mylliem, the Lyngdoh of Lyniong and the Sirdar of Pamsanngut. It is a precise and excellent model of the treatment of these disputes. In the case of one village, he decided that its recent establishment by subjects of Mylliem and the failure of the Sirdar of Pamsanngut to show that he had exercised authority over it, although geographically it might appear to be within his territority, was sufficient for holding it to be within Mylliem State; in the case of the other, the Lyngdoh of Lyniong had exercised jurisdiction in times past over the land and the purchase of the village land in recent years by the Siem of Mylliem and the desire of many of the people to be within Mylliem were insufficient to disturb the jurisdiction of the Lyngdoh of Lyniong.

A curious result of this judgment was that the village keeping its connection with Mylliem was cut off, mostly though perhaps not entirely, from the land of Mylliem State by the other village, which was held to belong to Lyniong.

Its enemies, who surround it, will try to confine its cultivation within as narrow limits as possible and will bring cases before the Political Officer with this intent.

But had the decision been to the contrary, the villagers would have been for ever in a state of smouldering rebellion under a small Sirdar unable to control them.

Other excellent examples are to be found in the careful decisions of Mr. Lainé and Mr. Cosgrave during their terms of office.

A few rules have been laid down in the course of the decisions.

1. Boundaries of States cannot be changed by Chiefs without the consent of the Government of Assam (Govt. order of 14-1-28 in the case of U Ender Singh and others of Mariaw versus the Siems of Mariaw and Nongkhlaw).
2. Purchase by a Chief of land in another State does not deprive the other Chief of jurisdiction over that land. (Commissioner's Political Appeals 18 and 21 of 1928).
3. Colonel Clarke, Deputy Commissioner, 1888, decided that the Wars should be confined to land below the top of the precipices.

That decision has been generally followed, though for example, Duara Nongtyrmen, a War village, has land on the high plateau

because a village of the State is situated on the plateau. The decision is very useful and substantially fair, though, as the War Country was settled by immigrants from the high hills, some persons who possessed land in the high hills before going to the War country could with reason complain of losing their ancient rights of cultivation.

4. It is submitted that when the houses of a village are placed, as a result of an inter-State boundary dispute, within the territory of one of the two disputing Chiefs, the order of Mr. Arbuthnott in 1907 is to be applied strictly to the villagers.

Most of the meaning of the boundary decision would be lost, if the people though forced to pay pynshok to the Chief be yet not liable to be tried by him; the Chief to whom the village was given would be unable to administer it.

5. It is submitted that Government can change State boundaries, already fixed, if the population of one State dwindles and that of a neighbouring State increases until land be insufficient.

If they have so much waste land that they cannot use it at present or in the near future, there is nothing to justify the making of profits from their raj land by a village or a Chief through leasing it to subjects of a State who are short of land.

The Mawmluh decision of 1929 is now being freely quoted by Chiefs: it is important to bear in mind that the cultivators had the choice of paying pynshok or khrong instead of rent; also that the rent was to be only a quit rent, fixed by the Deputy Commissioner, in lieu of pynshok.

A case of alteration of a boundary once fixed has never arisen and such a step would not be taken without a grave reason, for one object in fixing boundaries is to prevent future disputes and to bring peace. This object would be even more difficult to attain than at present if it were thought that changes could be made.

A SURVEY OF BOUNDARIES.

It might be thought that with the end of tribal warfare, a complete settlement of boundary disputes would soon have been accomplished by the officers of Government. Unfortunately, although most of the boundaries have been fixed by decisions, disputes are still so numerous that no Chief can meet his neighbouring Chiefs in friendship. If he has not a boundary case in hand, he is mourn-

ing the lost cases of the past and pondering over how he can revive them or considering how he can raise some claim in future.

The matter may appear of small interest, regrettable only for the waste of time of officers and having its lighter side, both to combatants and officials. But what may have been an amusement to a people under the secure protection of the British Government of the past is no longer a trifling matter for a nation exposed to the competition of alien peoples, even though the competition may be only by way of peaceful penetration. All hope of federation or of the welding of the Khasi nation into a unit, capable of progress, is frustrated by these quarrels. The national energy is dissipated in internal feuds. Moral standards are lowered, as to give false evidence on behalf of one's State is considered to be not only excusable but a patriotic duty.

Government has one more means of diminishing the disputes and that is a survey of boundaries by theodolite, considered in 1874 but never carried out. Doubtless the stone survey marks would disappear mysteriously, as has happened in most cases where stones have been placed for demarcation in these disputes, but a few very large pillars could be made and when disputes arose, the whole boundary could be relaid from these pillars. The knowledge that a boundary could be relaid accurately should prevent attempts to revive old cases.

In the high plateau there would be no difficulty in survey; the steep hill sides and forests of the War country would be obstacles. The boundaries of the sparsely inhabited Bhoi country do not at present require survey as disputes are infrequent.

As for the British portions, their forthcoming entry into the Council Government makes survey very desirable.

CHAPTER XVI.

THE SANADS OF THE CHIEFS.

The Sanad of the present day for Siems is as follows:—

SANAD.

You having been elected
Siem of the State of in the district of the Khasi

and Jaintia Hills, this Sanad ratifying your election and appointing you Siem, is conferred upon you on the following conditions:—

I.—You shall be subject to the orders and control of the Deputy Commissioner of the district of the Khasi and Jaintia Hills, who will decide any dispute that may arise between yourself and the Chief of any other Khasi State. You shall obey implicitly any lawful orders which the Deputy Commissioner, or other officer authorised on that behalf by the Local Government, may issue to you.

II.—You are hereby empowered and required to adjudicate and decide all civil cases and all criminal offences, except those punishable under the Indian Penal Code with death, transportation, or imprisonment for five years and upwards, which may arise within the limits of the State, in which your subjects alone are concerned. In regard to the offences above excepted, you shall submit an immediate report to the Deputy Commissioner of the Khasi and Jaintia Hills, and faithfully carry out the orders he may give concerning their disposal. And you shall refer all civil and criminal cases arising within the limits of your State, in which persons other than your own Khasi subjects may be concerned, for adjudication by the Deputy Commissioner of the Khasi and Jaintia Hills, or by any other officer appointed by him for that purpose.

III.—The Local Government shall be at liberty to establish civil and military sanitaria, cantonments and posts in any part of the country under your control, and to occupy the lands necessary for that purpose, rent-free.

If Government wishes at any time to construct a railway through your territory you shall provide the land required for the purpose without compensation, save for occupied land, and shall render to the Local Government in this behalf all assistance in your power.

IV.—You hereby confirm the cession to the British Government by your predecessors of all the lime, coal and other mines, metals and minerals found in the soil of your State, and of the right to hunt and capture elephants within your State, on condition that you shall receive half the profits arising from the sale, lease or other disposal of such lime, coal, or other minerals, or of such right. On the same condition, you confirm the cession to the British Govern-

ment of all waste lands, being lands at the time of cession unoccupied by villages, cultivation, plantations, orchards, etc., which the British Government may wish to sell or lease as waste lands.

V.—You shall not alienate or mortgage to any person any property of the State, movable or immovable, which you possess or of which you may become possessed, as Chief of the State.

VI.—You shall not without the sanction of Government lease or transfer or allow to be leased or transferred to persons, other than your own Khasi subjects, any land or lands in your jurisdiction.

VII.—You shall cause such areas as may be defined by the Local Government for that purpose to be set aside for the growth of trees to supply building timber and fire-wood to the inhabitants of the State. You shall take efficient measures to secure these areas against destruction by fire and by *jhuming*.

VIII.—You do hereby confirm the agreement given by your predecessor, regarding the trial by the Deputy Commissioner alone of suits for divorce and other matrimonial cases arising between Native Christians, who have been married in accordance with provisions of the Indian Christian Marriage Act, XV of 1872.

IX.—If you violate any of the conditions of this Sanad, or in the case of your using any oppression, or of your acting in a manner opposed to established custom, or in the event of your people, having just cause for dissatisfaction with you, you shall be liable to suffer such punishment as the Local Government, subject to the control of the Government of India, may think proper to inflict.

X.—According to the conditions above enjoined, you are hereby confirmed Siem of the State of in the Khasi Hills. In virtue whereof this Sanad is granted to you under my hand and seal this day of 19 .

The stages in the development of the agreements, which led to the Sanads, are:—

(1) The agreements before 1859.

(2) The special agreements of 1859 about waste land.

(3) The agreements of 1856-1864.

(4) The general form of agreement prescribed in 1867.
(5) The general form of agreement prescribed in 1875.

1. THE AGREEMENTS BEFORE 1859.

The first was made in 1826 by David Scott, Agent to the Governor General, with the Chief of Nongkhlaw (Aitchison's Treaties No. VIII). He with the consent of his Lashkars and Sirdars agreed to become subject to the Honorable Company and placed his country under their protection. He promised to rule his subjects according to the laws of his country, keeping them pleased and contented and carrying on the public business according to ancient custom, without the interference of the British Government. A similar agreement was made with Khyrim. In 1829 a survey party was attacked in Nongkhlaw and some were killed. Neighbouring Chiefs assisted Nongkhlaw and war lasted until 1833 by which time Mariaw (Aitchison No. XII), Rambrai, (a subsequent agreement of 1835 is given in Aitchison No. XXIV, Khyrim (No. XVI), Mawsynram (No. XVIII), Malai (No. XIX) and Bhowal (No. XX) had submitted and made treaties. These differ from one another but they place these States under the control of Government save that in the cases of the last two it is doubtful whether the submission was to be only in the special matters mentioned. In some treaties, the Chiefs were deprived of power to try murder and other serious cases. Nongkhlaw submitted in 1834.

The Siem of Cherra, an ally of the British, made a treaty in 1829 placing his country under their protection and control (No. X).

Maharam made peace and acknowledged dependency in 1839 (No. XXXIX).

The Sirdars of Mawlong were appointed by Government in 1857 (No. XXXIX), so losing their independence.

So previous to 1859, only some of the States had made treaties.

2. THE AGREEMENTS OF 1859 TO 1862.

In 1859 Government decided that all Chiefs should sign agreements and receive Sanads. Apart from these agreements, special agreements were obtained on the advice of Mr. Allen, member of the Board of Revenue, Lower Provinces, who was deputed in 1858 to enquire into the system of administration. In his letter of the

22nd September, 1858, he recommended the taking of mineral tracts on perpetual leases, on condition that the owners received half of whatever rent or revenue the Government might be able to realise therefrom. He suggested that similar arrangements be made with the Chiefs in regard to waste lands which might be made valuable if they were transferred to Government and judiciously leased to European and other settlers for the cultivation of tea, coffee and other articles.

The Government of Bengal approved of Mr. Allen's recommendations in letter 955 of the 20th April, 1859. An example of the form of agreement of 1859 is given in Aitchison No. XLVII and is reproduced in the appendix to this book. Not all of those agreements written in Bengali are exactly alike. For example in twelve of them, there is a statement that durbars were held by the Chiefs in which the people gave consent, in the others there is no mention of this point. The agreements executed between 1859 and 1862 by Mylliem, Bhowal, Nongstoin and Malaisohmat begin by an acknowledgment of submission to the Assistant Commissioner at Cherrapunji.

In all the agreements, the Chiefs agreed to lease in perpetuity to Government all uncultivated waste lands, that being brought under cultivation would cause no injury to the people of the Elaka. The Chiefs and their successors were to have no objection to Government utilising the lands leased by reclaiming them, leasing them out to other persons and settling tenants on them; but they or their successors would always get half the profits of the lands leased, provided there were any profits. Without permission of Government no land was to be leased to a Bengali or European.

All places where minerals existed were also leased to Government; half the profits of future leases of these lands to individuals by Government were to go to the Chiefs. In the agreements with nine of the States there is no mention of minerals.

Forest tracts, as well as uncultivated waste lands, were mentioned in the agreements with Mawdon and Shella, Khyrim, Cherra and Nongkhlaw did not execute these agreements; Khyrim made a special agreement in 1860.

Apart from the special agreements about waste land, general agreements which begin to take the form of the present day Sanads were executed from time to time between 1856 and 1864 with Nongkhlaw, Khyrim, Mylliem, Nongstoin and Bhowal. In these the right of Government to establish Civil and Military sanitaria,

cantonments and posts was inserted. By the Nongkhlaw agreement, it is written that the Siem must make grants of waste lands upon the same terms as those that may be adopted by the British Government in granting out its own waste lands.

SUBSEQUENT AGREEMENTS AND SANADS.

In 1867 a general form was prescribed, (Aitchison No. LVII). Clause 8 reproduces the cession of waste lands in the agreements of 1859, but the wording is different. There is no restriction to such lands as being brought under cultivation would cause no injury to the people. The reason and effect of this change will be discussed in Chapter XX.

There were some changes in the standard form of 1875 (Aitchison No. LVIII) but these are of wording only, save that in clause 8, the right of Government to lease, as well as to sell waste lands was re-asserted from the agreements of 1859 and the right of Government to half the profits on elephants was introduced.

Agreements were abolished and Sanads substituted in 1877.

The only differences save slight changes of wording between the Sanads of 1877 and that of the present day, are (1) the addition of the sentence about railway construction in clause III, (2) the insertion of clause VI in 1909 forbidding lease or transfer to persons other than Khasi subjects of the Chief, (3) for the words " Chief Commissioner " in clause VIII, " the Government of Assam " was substituted. Sanads are nowadays signed by the Commissioner of the Surma Valley Division: the Siems desire that they should be signed by the Viceroy or by the Governor of Assam.

To Lyngdohs and Sirdars, Sanads are not issued, but parwanas in the following form:—

> You are hereby informed that the Deputy Commissioner of the Khasi and Jaintia Hills District approves of your election by the people of the marginally named villages to be their Sardar (or Lyngdoh). You should conduct yourself in accordance with the custom of the community, and you should carry out all orders issued to you by the British Government.
>
> You should always take care of the public roads that pass through your ilaka. You should carefully discharge your duties as Sardar (or Lyngdoh) of ..... In the event

of misconduct on your part, you will render yourself liable to dismissal from the Sardarship or Lyngdohship of.....

Deputy Commissioner.

RECENT CRITICISM OF THE SANADS BY KHASIS.

A statement was drafted by certain Chiefs and people of the Khasi States for the consideration of the Statutory Commission and Indian States Enquiry Committee in 1921: another statement was prepared by a conference of the Khasi States in 1932. Their arguments against the agreements made in 1859 and subsequently are set forth below. They desire to go back to the position before 1859. These agreements (many of the States had at that time made no agreements at all) placed the Chiefs executing them in a position of general subjection to the British Government and imply that the Chief can be removed if he do not please his subjects. The only power of internal interference specified is that heinous crimes are triable by the British authorities.

The arguments in the statements are as follows:—

(1) That the Chiefs had no right in 1859 to alienate land or minerals without consent of the people.

(2) That even in where the agreements of 1859 mention that the people gave their consent in durbars, it is uncertain who constituted the durbars.

(3) That the consent of the people even if secured was obtained owing to their ignorance.

(4) That the leasing of all waste land means that Khasi people, who all practise shifting cultivation, are liable to have all land not at the moment under crops taken from them to their complete ruin.

(5) That the right of establishing Civil and Military sanitaria, cantonments and posts on land rent free is unfair to private owners of the land.

(6) That the issue of orders by Government under clause I of the Sanad means only an issue of orders to the Chief personally and does not include power to give orders to the people of the State as a whole. In other words, that there is no power of legislation by executive order.

It follows that there is no power to introduce Acts of British India without the consent of the Chiefs and their Durbars.

To these arguments and objections two others can be added.

(7) Some of the Chiefs contend that their Durbars, not the Court of the Deputy Commissioner, have power to try cases under all orders having the force of law and Acts (except the more serious offences referred to in the Sanads under the Indian Penal Code). They usually have this power but Government has deprived them of it in some special matters.

(8) Some of the people contend that the Chiefs have no right to the half share in profits from minerals in Ri Kynti (private land), nor on raj land if that raj land lies within a village or group of villages (a raid), as the proper persons to receive it are the durbar of the village or raid. Also that any profits on forests, now going to the Chiefs, should go to the durbar of the village or raid.

These criticisms will be considered in the examination of the Sanads clause by clause.

So wide are the powers of Government under the agreements that the Government of Bengal in 1867 and two Legal Remembrancers and a Deputy Commissioner in 1910 considered that the States were a part of British India.

It is unnecessary to set forth arguments showing that the contrary view was held at various times from 1835 till 1910, as, since that year, when an Act was extended under the Scheduled Districts Acts, the Foreign Jurisdiction Order of 1902 has been used as a vehicle for Acts, territory of the States being considered as outside British India.

In Hajon Manick vrs. Bursing, XI Calcutta 17, the High Court treated the Siem of Cherra as a Ruler of a semi-independent foreign State.

The Government of India notified in 1933 that their sanction is required under section 86 of the Civil Procedure Code to sue a Khasi Chief.

CHAPTER XVII.

CLAUSES I AND II OF THE SANAD.

1. The Chiefs are placed under the orders and control of the Deputy Commissioner and are bound to obey all lawful orders issued

by the Deputy Commissioner or other officer authorised on that behalf by the Government of Assam.

The sixth of the criticisms made by certain Khasis, set forth in Chapter XVI, is that the orders can bind the Chief but not his Durbar. But in a Khasi State, a Chief is nothing without his Durbar; the argument would put an end to all power of Government over the States. It cannot therefore be admitted in this form.

The real meaning of the criticism is that the Deputy Commissioner can compel the Chiefs and Durbars to act properly according to the existing laws and customs of the State but he cannot give orders which are new laws for the State without consent of the Durbar. It follows from this argument that Acts of British India cannot be introduced to govern subjects of the States without consent of the Chiefs and their Durbars.

The argument will be discussed below under the heading " The Legislative Authority." Meanwhile the following remarks are made upon the general exercise of control.

There is no general rule which can guide the exercise of the power. It has been laid down that there is, in judicial matters, no absolute right of appeal from the decision of a Chief and his Durbar, but the Deputy Commissioner has a duty of superintendence and is bound to see that the Durbar has jurisdiction and has tried the case fairly and without bias. Decisions against custom or justice, equity and good conscience can be set aside. The making of petitions, commonly called appeals, against judicial decisions of the State authorities is a highly valued and much used privilege.

In the Shella Confederacy, a right of appeal from decisions of the Wahadadars was embodied in the agreement of 1851 and is still preserved.

By Clause II, the Chiefs have no power to try offences under the Indian Penal Code punishable with more than five years' imprisonment and have no right to try persons who are not their own subjects. They maintain no police or prisons. The interference necessary for the carrying on of the administration is of necessity very considerable, but if Chiefs at times think interference is excessive, their own subjects, and indeed they themselves are responsible, not the Local Government. Their subjects make appeals and petitions to the Deputy Commissioner, the Commissioner, and to Government with no thought that the more the interference the less the independence of their own Chiefs and Durbars.

The Chiefs desire assistance for other reasons. The Khasis have always been of a democratic and independent temper, not given to obeying with meekness orders of Chiefs displeasing to them.

The Chiefs are elected by the people or rather by certain clans of the people, usually after a strenuous contest, but are removable only by Government and then solely for misconduct, though they may have long lost their popularity. They have no police to enforce their orders and being apprehensive of resistance to the execution of their orders and fines, they adopt the easy course of requesting the Deputy Commissioner's aid in the enforcement of orders, the compelling of refractory persons to attend Durbars and the realisation of fines. The question of the justice of the order or fine is then raised before the Deputy Commissioner. With the spread of education there is less disposition to obey without question the order of Chiefs and Durbars. Whatever may be the benefit from constant interference, demanded as has been said by both Chiefs and subjects, the degree of self-government must be smaller thereby.

There is great need of control. Financial maladministration is prevalent, though due to the system rather than the fault of any individual Chief. A Siem is supported at the time of election by one branch of the Siem clan, who provide the heavy expense of entertainment or of buying votes. The Siem takes office under obligation to his relatives or to others who have lent him money. There is no separation of the public and private purse of the Siem, indeed no expenditure on public works is expected of him. The State income is treated by him as a means for the maintenance of himself, the female Siems, as his relatives are called, and of his wife and children. Except in Mylliem and Khyrim, the revenue is so meagre that there is a very small amount left for State purposes, and in Mylliem at any rate little of the balance is so used. As the Siem's son does not succeed to him, he does not concern himself with the financial condition of the State after his death.

The States have in fact become entirely dependent upon Government in spite of the policy of interfering as little as possible. So much so, that on withdrawal of Government support many of the Chiefs could not maintain their authority.

2. THE LEGISLATIVE AUTHORITY.

In the beginning of this chapter, reference was made to the sixth of the criticisms of the Sanads and its real meaning as an

objection to the issue of executive orders having the force of law or the introduction of Acts of British India to govern the people of the States. The critics point to the earliest agreements, such as the one made with the Siem of Cherra in 1829 (Aitchison No. X) by which the Siem and his officers were to conduct the affairs of the country according to former usages and customs. A late example is the agreement with Nongstoin in 1862 (No. XLVIII). They argue that orders should be confined to the existing laws and customs, as they may be altered from time to time by consent of the people. In their opinion, the words " lawful order " in Clause I of the Sanads mean an order in accordance with the law and custom of the State.

The words " lawful order " first appeared in the standard form of Sanad of 1877; in the general form of agreement of 1875 the word " order " alone was used in Clauses I and VII.

The word seems to mean " according to the law which Government may decide to be in force in the States from time to time; if the order creates a new law, the approval (express or implied) of Government is necessary; if it does not create new law, it must be in accordance with existing laws and customs." That is to say, the order of the Deputy Commissioner must not be capricious.

Whether an order of the Deputy Commissioner approved by the Government of Assam and in turn approved by the paramount power, the Government of India, can ever be unlawful is not a question suitable for complete treatment in this book, nor is the connected question whether the Government of India can, at its pleasure, introduce, to apply to Khasi subjects of States, any Act of British India under the Foreign Jurisdiction Order of 1902 on the ground of cession, use or wont.

The plain facts of the situation furnish a justification of the policy pursued by Government. Of the twenty-five States, some consist merely of a few villages. They have not the legal knowledge to create laws for themselves suitable to modern conditions. British villages are in the midst of them and they are surrounded by plains districts in which the laws are advanced and complex. An advanced society exists within their own borders in the town of Shillong and, owing to the spread of education, is gradually coming into being in the interior of their own States.

Internally customs are changing. For example, the use of money has created a system of land mortgage, but there are no means of drafting a law of transfer of property even of a simple kind.

Although the best policy towards a people in a simple stage of development may be to leave them alone, this policy is very difficult to pursue when they are in daily contact with a more advanced society and mode of life.

All this does not mean that Durbars of the States have no power to pass laws under the control, where needed, of the Deputy Commissioner. Indeed this should be encouraged. But at present they have not the needed knowledge and education. Federation would be of advantage for law-making.

8. THE PRACTICE OF INTRODUCING LAWS IN THE STATES.

The reason for the existing practice is readily understandable.

The Chiefs were placed under the orders and control of the Deputy Commissioner. They were deprived of the power to try cases in which persons not their own subjects were concerned, and even in cases against their own subjects they could not try murder and heinous offences (later defined as offences punishable with imprisonment for five years and upwards under the Indian Penal Code).

For cases triable in the British Courts some law had to be found as there was no written law in the States, so the Indian Penal Code was taken as the Criminal Law; for the Civil Law, justice, equity and good conscience were used.

Starting from this position, there are four ways in which the introduction of new laws has been effected.

1. Laws passed by the Durbars of the States. Some have been put in writing, especially in the War States. This method ought to be encouraged and assisted; it will doubtless become of greater importance in the future, provided the States maintain their integrity.

2. The second method is indirect but is nevertheless of great importance. The Chiefs were deprived of the power to try Civil cases in which persons not their own subjects were concerned. The Courts of the Deputy Commissioner and his Assistants decide such cases according to equity, justice and good conscience, but as the embodiment of these is the Civil Laws of British India, the Courts, in practice, use those in force in the Province of Assam, provided they do not conflict with a local custom. The Courts, assisted by the now numerous bar, may not have as much knowledge of Khasi customs,

even if one exists on the particular point, as they have of British Indian Law. The latter continually tends to replace the former, even where Khasis are concerned.

8. The third method is by Executive Orders, usually in criminal or quasi-criminal matters.

The Deputy Commissioner, subject to the control and sanction of Government, issues orders stating that the punishment for disobedience will be as provided under section 188 of the Indian Penal Code. He, at the same time, directs the Chiefs and Durbars to republish the orders, so making them State Law binding their subjects and punishable by whatever penalty they please. A non-subject of any particular State in which the offence has been committed is punishable by the political Court as under 188 I.P.C.

There is a variation of this method.

In the case of Arms, Excise and Opium, the Chiefs were not allowed to try offences.

An early letter about Opium and Excise is contained in letter No. 573 dated the 7th July, 1877, from the Secretary to the Chief Commissioner of Assam to the Deputy Commissioner of the Khasi and Jaintia Hills:—

> "You must explain to the Siem that his tenure of authority, and, indeed, that of all Siems in these hills, is contingent on good and progressive Government. If the Siems of the Khasi Hills, relying on the actual wording of their sunnads attempt to oppose the introduction of good government into their States, and cease to follow in the footsteps of the Imperial Government they will render themselves liable to be deprived of the authority with which they have been invested by the Imperial Government. Persons of their status can never be permitted to administer their small States in a manner that is inconvenient or dangerous to the surrounding population in actual British territory. The effect of the order will be that the Siem of Cherra Poonjee must take out licences, either in his own name or in the name of some person authorised by him, in the usual manner and under the ordinary conditions for all opium and ganja that he requires. These drugs will only be supplied to him from the Government store at Sylhet on the condition that he agrees to abide by the terms contained in the licence issued, and to enforce those terms in any shops that may be established within his territories."

The main order about Excise is in letter No. 96 F. & P. 2259 R., dated 9th June. 1902, from the Secretary to the Commissioner of Assam to the Deputy Commissioner, Khasi and Jaintia Hills.

> " I am directed to acknowledge receipt of your letter No. 1280, dated the 17th May, 1902, reporting on the petition, dated the 20th March, 1902, from U Ron Sing, Siem of Mylliem, in which he prays that he may be allowed to exercise jurisdiction in excise cases in which his subjects are concerned.
>
> In reply, I am to say that offences under the excise rules which apply to Shillong and the country adjoining it are of a special character. They result from a special set of rules which have been introduced by the British Government, with the view of keeping a check on the liquor trade affecting the population which immediately surrounds the headquarters of the Administration. The rules not only create a special case of offence, they create a special tribunal for their punishment, that of the Deputy Commissioner of the District. The Chief Commissioner considers therefore that these offences are distinct from those to which the sanad granted to the Siem refers, and that the infliction of punishment for them is not authorised by the powers which the Siem holds under the sanad in regard to criminal offences which are recognised by the ordinary or customary law of the land. Mr. Fuller realises at the same time that the Siem is interested in the prevention of smuggling, and that these interests merit careful protection by Government. Any information which he may lodge as to the breach of the excise rules should lead to prompt and careful investigation."

The Excise policy of restriction of distilling in 1911 was put into force in spite of the opposition of the Chiefs and Durbars.

Subsequently as a matter of grace and only if it worked well in practice, Government in 1926 and 1930 allowed the Chiefs to try Excise and Opium cases.

The issue of gun licences and offences for breach of their conditions are entirely in the hands of the Deputy Commissioner.

4. The fourth method is the introduction of an Act of British India.

From the above it may be thought that as Government can introduce rules and orders having the force of law in spite of the

opposition of the Chiefs, so Government may introduce any Act of British India at its pleasure.

It seems that there is no pure example of an Act of British India introduced to govern subjects of a State without consent of the Chief and Durbar of that State; there are examples of Acts introduced to govern non-subjects of a State, but they are rare. The Scheduled Districts Act is the vehicle of introduction of Acts in the British portions of the hills, and it was at one time thought that the Scheduled Districts Act applied to the whole Khasi and Jaintia Hills District, including the States. Indeed the opinion, dating from at least 1867 and held by two Legal Remembrancers and the Deputy Commissioner as late as 1911, existed among some officers that the States were British territory.

The last example of its use in 1910 to apply an Act to the States was to bring the Bengal Municipal Act into the villages of Mawkhar and Laban in Mylliem State, but about that time Government recognised that the Acts, for which it had been used formerly, were not in force in the States. The consent of the Siem was obtained for introduction of the Bengal Municipal Act. The view that the States were part of British India did not prevail and the question has been set at rest in recent years by the use of the Foreign Jurisdiction Order of 1902 to introduce Acts into the States.

The argument that Government in times past brought Acts into the States as it pleased therefore disappears.

The Indian Penal Code was brought into the States by Government of India Notification 2277 I.B. of the 12th October, 1916, and portions of the rules of Civil and Criminal Justice, hitherto in force only in the British portions of the hills, were introduced by the same notification. Previously the spirit of the Indian Penal Code had been followed. In the same year the Indian Penal Code and the Code of Criminal Procedure were introduced in the portions of Shillong town lying in the territory of the Siem of Mylliem. In November, 1930, jurisdiction in Criminal cases was given to the Calcutta High Court in the non-British portions of the town of Shillong (vide notifications reproduced in the Assam Gazette of the 26th November, 1930).

The consent of the Chiefs was not obtained in the above cases. It was notified, however, that the enactments were to apply only to cases which they were not empowered to adjudicate and decide under any Sanad or Grant.

The Indian Penal Code is an example of introduction of an Act at the pleasure of Government to apply to non-subjects of a State. Subjects of States also are within the Code for certain offences and to this extent the Code is an example of introduction of an Act for them at the pleasure of Government: but the power of trying subjects of States for these offences was specially reserved to Government by the Sanads, so it is not a pure example but a special one. The Criminal Procedure Code is on the same footing; furthermore, it is mostly only adjective law.

In 1922 the consent of the Siem of Mylliem was obtained for bringing in the Indian Electricity Act to a portion of his State, and his consent was given for the extension of the Assam Municipal Act in 1928 to the parts of the town of Shillong within his State. When the Gambling Act was introduced in these parts of the town in 1932, a similar consent—though only after great pressure had been put upon him—was obtained, but the Act was by a proviso made applicable only to such cases as the Siem was not empowered to adjudicate and decide by any Sanad or Grant, i.e., it was not made applicable to his subjects.

The Divorce Act was not extended in 1883 nor in 1931, owing to the objections of the Chiefs, and the Assam Highways Act was not introduced in recent years for a similar reason.

4. THEORY UNDERLYING THE PRACTICE.

No complete theory has ever been announced.

(1) It is quite clear that Government has always claimed the right to legislate for non-subjects of States in any way deemed fitting; it follows that any Act of British India, as well as any order having the force of law, can be introduced for non-subjects of States without the consent of the Chiefs and their Durbars. Within the last two years the Government of Assam informed the Siem of Mylliem that if he and his Durbar refused to consent to the introduction of Excise, Opium and Dangerous Drugs Acts, there was power to bring them in without his consent.

As the States are not British India, these laws must be part of the law of the States although not administered by the Durbars of the States.

(2) The next point is whether non-subjects are under the laws of the States except in so far as Government has specially legislated

for them. Some would reply to this in the negative, but it is certain that they are governed by the Land Laws of the States in Civil cases, e.g., a foreigner may not hold land in Shella, a foreigner can only acquire land in the portions of Shillong town in Mylliem State subject to the Clan and State law concerning the land.

Furthermore, there are laws and customs about markets, tolls, and village forests administered by Criminal Courts.

If non-subjects do not obey them, the States cannot be administered. If these criminal and quasi-criminal laws be held not to be applicable to non-subjects, publication in the form of orders is required for administration by British Courts.

The laws are mostly of a petty kind of the nature of bye-laws: they need to be very simple and drafted with a minimum of detail as they must be an exact counterpart of the law enforced on State subjects by the Durbars.

This topic and the allied one of what laws are necessary for non-subjects now that the Scheduled Districts Act and laws introduced thereunder are known not to be in force in the States deserve examination at the present time.

(3) The next matter is the issue of orders having the force of law without consent of the Chiefs and their Durbars. The power must lie under Clause I of the Sanads and any general discussion of the criticism mentioned in paragraph 1 of this chapter is unsuitable in this book. One point, however, requires mention. It has been contended by some Chiefs that Clause II gives power to them to try all cases in which their own subjects are concerned save those punishable under the Indian Penal Code with death, transportation for life and imprisonment for five years and upwards. The practice by Government of reserving some classes of offences, such as Arms and Excise, for trial by the Political Courts is, so they urge, contrary to Clause II. The Government Excise letter of 1902, quoted above, is a reply to this contention but it could be wished that Clause II had been drafted to make more explicit this power of Government, a point that ought to be kept in mind if the Sanads be revised in the future.

The practice of declaring the penalty to be that under section 188 of the Indian Penal Code is defective in any area administered criminally by the High Court of Calcutta; the penalties ought to be embodied in the orders.

(4) The remaining topic is the introduction of Acts of British India to apply to subjects of States without consent of the Chiefs and Durbars. But before considering this, a description is necessary of the strains upon the system which have made the question to be of importance.

The first strain is the existence of many Khasis who reside in one State but call themselves subjects of another State. The next chapter is devoted to consideration of their case as they are in recent years ever more clamant in their objection to submit to the Durbar of the State wherein they reside, claiming exemption under Clause II of the Sanads. Those who make this objection are mostly residents in the portions of the town of Shillong within Mylliem State and many of them are the most highly educated of the Khasi people. Their number ought to be diminished and in the next chapter an attempt will be made to show how this may be done.

The other strain to the system is the large number of non-Khasis resident in the portions of the town of Shillong within Mylliem State. For their control Acts of British India will be necessary. Even if the legal difficulty of distinguishing a subject from a non-subject of the Siem did not exist, the creation of two bodies of law, differing markedly from one another, within one town, to apply to two communities, dwelling together in close commercial and civic intercourse, is very confusing and objectionable, and it becomes the more peculiar when the communities are not distinguishable racially into Khasis and non-Khasis, because a large number of Khasis claiming to be exempt from the jurisdiction of the Siem of Mylliem must rank themselves with non-Khasis for purposes of any laws except Khasi customary law.

The third difficulty arises from the rapid change in the commercial and social life of the Khasis due to the presence of the plainspeople and the Provincial Government in their midst and to modern transport.

The last difficulty is the introduction of the Calcutta High Court on the criminal side into the town of Shillong, (technically into the municipal and cantonments area, which is British, and into the administered areas, which are territory of the Siem of Mylliem) in 1930.

Within the town of Shillong, the most suitable laws to govern non-subjects of Mylliem State are Acts of British India. It is submitted that orders of Government having the force of law, con-

taining in them the penalties, are valid law for non-subjects of Mylliem but these orders must be a replica of an Act because it is impossible to legislate satisfactorily in a manner more simple than an Act when the administration lies with the High Court. For the reasons given above, the law for subjects of Mylliem ought to be the same as the law for non-subjects of Mylliem. But when a replica of an Act is drafted, the Siem and his Durbar pronounce it to be far too complicated for their understanding. The intricate Dangerous Drugs Act is an example. The introduction of the Excise Act for non-subjects with the reduction of the Act to simple rules for administration by the Siem and Durbar was recently considered.

The only portions of the Act found capable of such treatment were those dealing with Country liquor and ganja, but whatever the care in drafting, an unsound position is only too likely to ensue. A brief mention of one difficulty will suffice as an illustration.

Prevention and detection of offences by both subjects and non-subjects of Mylliem are the duty of the Excise Staff of the Deputy Commissioner; the officials of the Siem also perform these functions for offences by subjects of Mylliem.

The Excise Staff are bound by elaborate rules under the Act. When dealing with non-subjects of the State, the Siem's officials work under simple rules. It is impossible to know beforehand whether an offender be a subject of Mylliem State or not, so illegal arrests by Siem's officers and defective procedure by the Excise Staff, when alone or co-operating with the Siem s officers, are only too likely to occur. For this position, under the scrutiny of a High Court, the only safe treatment is the entrustment to the Staff alone of the Deputy Commissioner of the entire duty of prevention and detention.

But when the stage of trial is reached, the next chapter will show that under present conditions an accused Khasi has in reality often his own choice of trial in the Siem's Court or the Deputy Commissioner's Court, according as he may declare himself to be a subject or not, for there is no adequate way of deciding the point by the Court. Similar difficulties will arise for Arms, Motor Vehicles, Police and Opium Acts.

It is plain, therefore, that the system of introducing Acts of British India for non-subjects of a State and the leaving of jurisdiction over his own subjects to the Chief is unworkable in an area where there are large numbers of both classes.

The laborious task of converting Acts to orders, with penalties embodied, for non-subjects of the State ends in a like failure for the Siem and his Durbar can not administer a replica of the intricate orders.

In short, the complexity of modern city life is so great that the Siem and his Durbar are unable to administer certain laws in whatever form they are issued.

To a lawyer, viewing the matter as a legal, as distinct from a political problem, the conclusion is inevitable that the transfer to Government of the whole town of Shillong by lease or otherwise, so that it can be administered as British Indian territory, is the complete solution, one which many Khasis will regard with dismay, but which will not be much more severe upon Mylliem State than the only other solution, namely, that of bringing in Acts to govern both non-subjects and subjects of Mylliem and of depriving the Siem and his Durbar of all power of administering them, indeed of restricting the functions of the Siem and his Durbar to the Civil side as it is doubtful, because of the difficulty of distinguishing subjects from non-subjects, a topic to which the next chapter is devoted, whether any Criminal or quasi-Criminal law can be administered without confusion.

The former solution has the immense advantage of solving the problem of the Khasis who object to the criminal and civil jurisdiction of the Siem.

If under the forthcoming Constitutional System, there is to be a more marked distinction between the system of the States and the Provinces of British India, a vague dual system can not continue in the town. The removal of a source of friction between the Provincial Government of the future and the States will be to the advantage of all the States, who depend for their commerce and their higher education upon the Province.

5. The introduction of Acts of British India without the consent of the Chiefs and their Durbars is the final question. The need has been shown in the town of Shillong. Elsewhere there is no absolute necessity as orders which are a replica of Acts can be issued, though the labour would be great. But the issue of orders would have the same practical effect as the introduction of Acts, especially when their administration was reserved to the Courts of the Deputy Commissioner and his assistants on the ground of the importance or the complexity of the orders. An explanation

that recourse was not had to Acts in order to preserve the independence of the States would not be convincing, as the two methods do not differ in their effect. In the States outside the town of Shillong, the need is not so great; Acts would be few in number and of a criminal or quasi-criminal nature. Nevertheless the need does exist and will increase in future.

It seems therefore more satisfactory if Government can take the plain course of introducing Acts to govern everybody and to base their action on the general power of control in Clause I of the Sanads.

The objections to such power can be stated as follows:—

Introduction of new law by means of Acts is very easy. The Khasi national customs can be overthrown in a day by the imposition of a number of Acts, which can further be constantly changed by every amendment of the Legislature. They are not drafted by political officers in touch with the people and they are so complicated that they can only be administered by British Courts. For these reasons, the Chiefs oppose the introduction of Acts.

The reply is that presumedly the Government of India will, under the forthcoming constitution, be the authority to introduce Acts when at least as much scrutiny will be exercised as for orders having the force of law now issued, under control of the Government of Assam, by the Deputy Commissioner.

The Durbars and people of the States may fear encroachment on their liberties in the future. Whether this fear has any foundation is not suitable for discussion in this book. Encroachment, so the Chiefs think, is more likely from the Provincial Government than from the Government of India. Therefore the people of the States, if they have these fears, will wish to make their voices heard by the Government of India when legislation for the States is to be introduced. In the chapter on Federation, concluding this book, the recent creation of a Durbar of the States has been welcomed. The opinion of this Durbar could be taken before the introduction of Acts of British India by the Government of India.

The making of new law by orders issued by the Deputy Commissioner might be subject to the same opportunity for criticism and be subject to similar control by the Government of India or its agency. The agency used by the Government of India for this purpose is beyond the scope of this book. The word "Government" has been used deliberately throughout in a loose way in order to avoid this question.

This measure of protection seems to be adequate, or at any rate all that can be reasonably expected. This conclusion may cause dismay among some Khasis, but a main cause of the difficulty is that their own State organisations have not kept pace with the rapid development of society even in the interior of the States and certainly not in the town of Shillong.

Another objection is that the difficulties have arisen in the town of Shillong, and it is unfair to treat all the States more and more as if they were part of British India owing to this local trouble. The argument is only partially correct as the same difficulties are occurring elsewhere, although not so acutely.

The transfer of the town so that it could be treated as part of British India would make possible the use of orders instead of Acts in the States, but at the cost of much labour and it is doubtful if any greater liberty would be secured to the States thereby.

Of course in matters where conditions in the hills differ from those in the rest of the province, orders would be used instead of Acts; indeed Acts would be few in number, limited to matters in which the States must be brought into line with the rest of the province.

6. To sum up, the difficulties of the present position can be partly removed:—

(1) By completing in the best way possible the criminal or quasi-criminal code for non-subjects or States, if so be they are not governed by State laws.

(2) By diminishing the number of Khasis who can claim exemption from the jurisdiction of the State wherein they reside. The following chapter will be devoted to this topic.

(3) By special treatment of the town of Shillong, so that it can be administered similarly to British Indian territory.

(4) By making definite the power of Government to direct the trial of certain classes of offences by the Political Courts.

(5) By the introduction of Acts of British India into States to govern State subjects without the consent of the Chiefs and their Durbars, although full opportunity should be given to them for recording their opinion.

CHAPTER XVIII.

CLAUSES I AND II OF THE SANAD FURTHER CONSIDERED.

1. Clause II. A Chief by this clause is empowered to try all Civil Cases and all Criminal offences except those punishable under the Indian Penal Code with death, transportation or imprisonment for five years and upwards which may arise within the limits of his State, in which his subjects alone are concerned.

The reason for excluding plainspeople and Europeans from the jurisdiction of Chiefs and Durbars who had not learned the art of writing is obvious. There were some reasons for exempting Khasi subjects of other States. A Chief could not, in pre-British days, compel the attendance before his Durbar of a defendant not resident in his State unless with the aid of the Chief of another State. In all probability such aid was not readily given.

No Khasi likes to attend the Durbar of a Chief except his own. So Government by the Sanad confined the power of a Chief to his own subjects. There may have been a doubt in the mind of Government about the quality of justice obtainable in some cases by non-subjects.

2. In Chapter XV the conclusion was reached that a theory of territorial sovereignty had no connection with this clause in the Sanads. The cases cited show that according to Khasi ideas a permanent resident in a State was considered to be subject to the laws and jurisdiction of that State.

A Chief would not allow a person to settle in his State unless that person came under his authority. During many years of British administration no great difficulty arose. There were persons resident in one State who had rights to Ri Kynti in another State (for example, after the division of Mylliem State into the two States of Mylliem and Khyrim there were instances of this kind); a case about the land would naturally have been heard in the Durbar of the State in which the land lay. There were instances of trial by the Political Courts but these seem to have occurred when there was a dispute whether the land lay in one State or another. Leisure has been lacking for examination of all old cases to ascertain the method of treatment, but no acute question is known to have arisen. Offences against local customs and market laws by visitors or by temporary

residents were rare and the offenders would be anxious to make peace with the State Authorities to avoid being prohibited from again entering the State, but the offender could, if he wished, claim to be tried in the Political Courts. Cases of breach of contract or money lent or the like between persons resident in different States were brought to the Political Courts unless the parties preferred the State Durbars.

3. Khasis who leave a State and settle in another State do not as a rule abandon their ties with their Kurs. They retain their privileges in their old States, such as the right of voting and of attending Durbars. In the course of time they may lose their connection, as is seen in the case of the Wars who originally came from the uplands but who now form an entirely separate community.

The children have the nationality of their mother as descent is reckoned from the female side.

4. The difficulty has arisen in the town of Shillong to which a large number of persons came from many States, because it was the capital of the Province and the business centre of the hills, affording employment to them and educational facilities for their children. These persons have not identified themselves with Mylliem State. They are not of the clans who furnish Myntris to the State Durbar, they are not, save rarely, employed in the administration of the State and there is no local Raid Durbar for them to elect or attend. They have always considered themselves as strangers (nongwei), although they reside on Raj land. The children of these persons even to the third generation do not regard themselves as subjects of Mylliem State. Many are the most highly educated and prosperous persons in the hills. They prefer the Political Courts to the Durbar of the Siem, consisting as it does, of illiterate or barely literate Myntris, indeed as has been shown in the previous chapter, the complex modern conditions of life in the provincial capital are beyond the capacity of the Durbar of the Siem, designed for a simple state of society.

They have votes for the Provincial Council if resident within the area to which the Assam Municipal Act has been extended, although they are not British subjects and not resident in British territory.

Those occupying raj land ought, according to the cases cited in the previous chapter, to be under the jurisdiction of the Siem of Mylliem, but those residing in ri kynti leased from subjects of the State do not come within those cases. The only method open to

the Siem is to refuse permission for persons to reside in his State unless they submit themselves to his authority. The Siem does make the claim that they are subject to his authority, but for a number of years this claim has not been enforced and the situation has now got beyond his control. Their example is now being copied by persons in the interior.

5. In 1928, Government by letter No. 2373, Political, dated the 18th January ordered that when it was known or proved to the original court (i.e., the Chief's Court) that one of the parties to a case was not a subject, the orders of the Court would be set aside on appeal, unless the party had filed a statement waiving his right to the case being tried by a British Court. Government directed that the Courts of the Khasi States be informed that such cases should not be tried unless statements waiving the claim were filed. When it was not known to the Court of the Khasi State that one of the parties was not a subject of the State and no claim to that effect was made by either party, the fact that no claim was made would be taken as presumption of the party being a subject of the State.

The order of Government was intended to prevent the raising of the point for the first time on appeal, when a troublesome conflict could arise about whether the point had actually been raised in the Durbar of the Chief. But persons take it to mean that they have the power of choosing their courts and the wider it becomes known, the more objections are made. A party to a case having a mother or grandmother who came from another State now considers himself entitled to declare that he is a subject of the old State and so not amenable to the jurisdiction of the State in which he resides. Recently some petty cases in and near Shillong could not be brought to trial by the Siem for months, while the Political Courts were enquiring into the status of the parties, including the taking of evidence and counter evidence about the habits of the person and the origin of deceased female ancestors.

6. The topic has become of great importance in Shillong town since the introduction of the High Court of Calcutta in criminal matters; the Siem's portions of the town are under two sets of laws as has been described in the previous chapter, a system in itself extremely difficult to administer, but quite impossible without a simple method of determining to what persons each set of laws apply.

7. The Khasi National Durbar, a body of persons from both the States and the British persons, including some Siems and distinguished men both Khasi and Synteng, have given their attention to the problem of citizenship. The substance of their proposals, shortly put is as follows:—

1. A man shall be a citizen of a State:—
   (a) If his parents are citizens.
   (b) If he marry a woman of that State. (This implies that he lives with her in that State).
   (c) If he has a house of his own in that State and is willing to submit to the jurisdiction of that State.

2. When a man is born in one State and is a subject of that State but marries a woman of another State he is a citizen of the new State as well as of the old State He is not deprived of rights to property or to inheritance of property in his old State A man who settles permanently in a State other than that in which he was born can submit to the jurisdiction of the State in which he resides and become a citizen of it as well as remaining a citizen of the State in which he was born.

3. A man who has a house and land in any State ought to submit to the jurisdiction of that State as regards those properties, although he may be a citizen of another State. A man who has once become a citizen of a State does not lose that right of citizenship by residing in another State, but he ought to submit to the jurisdiction of the State in which he is residing at the time.

8. The proposals are mainly concerned with citizenship but they touch on the question of jurisdiction and lay down a policy that will command general agreement, except in the town of Shillong, that permanent residents should submit to the jurisdiction of the State authorities and cases about land should be triable in the Durbar of the State. But clearly no satisfactory result can come from an attempt to compel as many persons as possible in a State to become " subjects " under clause II of the Sanad. A better policy is to give to the Chiefs jurisdiction over those who have the rights of a subject and over such other classes of persons as Government may decide to be necessary for the proper administration of their States.

The Chiefs can not administer their States properly if an ever-increasing number of Khasi residents refuse to submit to them. The

number of such persons can be diminished without much objection except in and about the town of Shillong. A suggestion has been made in the previous chapter that the transfer of the town and its environs to the Provincial Government would solve many problems. But even if this complete solution be not effected, the problem of Khasis who have come from other States to settle in and near the town seems to call for special treatment because they did not come in order to be citizens of Mylliem State or to place themselves under the protection of the Siem. For the moment,, therefore, their case can be excluded from consideration. It will be treated separately below.

9. If a policy be adopted of giving to the Chiefs power over all Khasis, the result will be that where Khasis alone are concerned:—

(1) In Criminal matters, Chiefs with their Durbars will try all offences save—(a) those punishable under the Indian Penal Code with death, transportation and imprisonment for five years and upwards, and (b) offences under certain Acts and orders having the force of law that Government may make triable by the Political Courts, vide Chapter XVII. The place of trial would be determined by the principles laid down in the Criminal Procedure Code.

(2) In Civil matters, all cases would be triable by Chiefs with their Durbars. The place of trial would be determined by the principles of sections 16 to 20 of the Civil Procedure Code, altered to suit the special conditions. Section 18 is unsuitable, the Deputy Commissioner must decide the place of trial when jurisdiction is uncertain. He must have power to transfer to his own Court all cases in which there is doubt of a satisfactory trial being obtained.

The merit of such a policy is the disappearance of the word " subjects " with its complications from clause II of the Sanad. But objections to it are certain. No Khasi likes to attend the Durbar of any Chief save his own. Many Khasis not resident in a State do not have confidence in the trial of their suits by the Chief and Durbar of the opposite party.

The main cause of the present trouble is the resistance of permanent residents within a State to the authority of the ruler of that State. It can be argued that a remedy can be found without granting to a Chief power over non-residents in his State and that the

trial by the Political Courts of the few cases where non-residents are concerned does not adversely affect the administration of the States by the Chiefs.

10. If these objections are to be met, a moderate policy of extending the judicial power of the Chief to Khasis who have their principal or permanent place of residence in the State is indicated.

There is fair reason for a further extension to cases concerning land held in a State by a non-subject of that State, even though the non-subject resides outside the State There should be nothing in this proposal in conflict with Khasi ideas In the Shella Confederacy no stranger can get land in the State unless he promises to obey the authority of the Wahadadars with regard to that land.

For cases concerning property situated in more than one State, the provisions of section 17 of the Code of Civil Procedure could be applied provided that when objection be made by a party or a Chief, the Deputy Commissioner would have power to decide in which Durbar the trial should be held.

The next point is the possible desire of Khasi (including Synteng) British subjects for exclusion from the jurisdiction of the Chiefs. They would argue that as British subjects who are people of the plains of India are excluded, Khasi British subjects have a right to the same privilege. It is beyond the scope of this book to pronounce on this question.

The lack of confidence of many Khasis in the Durbars and the absence of effort by them to support the independence of the States as at present administered are obstacles in the way of giving wide powers. If British subjects be excluded, decisions whether particular persons are British subjects or subjects of States will be a difficulty familiar to all who have conducted elections of Sirdars in the War country where territories are intermingled.

The complete policy is probably too much in advance of Khasi ideas at the present day and the more restricted policy, notwithstanding its greater administrative difficulties, is more likely of public support.

11. To put either policy into effect an alteration of the Sanads is necessary.

For the second and more restricted policy under a revised Clause II, a Chief will have power to decide:—

(1) All Civil cases and all criminal offences which may arise within the limits of his own State and in which his own subjects,

i.e., those who are full citizens of his State, or those Khasis (not being British subjects, if their exclusion be desired), who have their permanent or principal place of residence in his State, alone are concerned.

(2) All Civil cases concerning immovable property in his State in which Khasis (not being British subjects?) alone are concerned.

The clause may be an illogical patchwork, but it presents Khasi opinion. The Khasi States may agree upon a definition of citizenship or devise a regular procedure of admission to citizenship, but provided the Chiefs have jurisdiction over permanent residents, the point is of minor importance.

12. For Shillong town this policy is impracticable as has been said above. Those who have hitherto refused to become subjects of Mylliem might change their minds if the Siem and his Durbar granted them a local Raid Durbar for trial of their own cases and rights of voting for Myntris. This plan is not new but no progress has been made towards its realisation. Compulsion by Government of the community would not produce peace as they would not be content with the kind of administration at present conducted by the Siem and Durbar and would strive for radical changes. Voluntary registration as subjects of Mylliem would settle the difficulty in the Courts about jurisdiction over residents, though probably unacceptable to the Siem, for many persons, really subjects, would refuse to register themselves.

In the preceding chapter, the conclusion was reached that in all criminal matters there ought to be one set of laws and one executive authority. It was said also that there could be only one judicial authority when laws were complicated. In Civil matters the position is not at present so acute but as forcible subjection of the educated Khasi community would produce turmoil in the primitive internal administration, not designed for such a community, the only plan would be voluntary registration as a subject or the continuance of the present system whereby a female ancestor of another State is a valid defence to the Siem's authority and the Siem would be continually defeated in his claims.

It is very questionable whether the Siem and his Durbar, provided that the rents and profits from State property in the town are secured, would find it to their advantage to attempt to function in such conditions.

CHAPTER XIX.

CLAUSE III OF THE SANADS.

1. The basis of this clause first appeared in the agreements of 1856-62 with Nongkhlaw, Khyrim, Mylliem and Bhowal (Aitchison No. XXXVIII). Government can, by the wording of the clause of the present day, occupy land rent-free for Civil and Military Sanitaria, Contonments and Posts.

In the agreement with Nongstoin in 1862 (Aitchison No XLVIII) there is a clause promising full compensation for lands occupied for these and other Gover unent purposes. In the agreement with Langrin in 1864 compensation was to be paid to possessors when the land was not Raj land The important words "and for other Government purposes" in the old agreements of 1860-62 were unfortunately omitted in the standard form of agreement of 1867 (No. LVII), for no discoverable reason. The most important transaction under the agreements has been the cession of the Civil Station of Shillong in 1863. It was expressly based on the agreement of 1861. The station must therefore be a Civil Sanitarium as it seems incredible that if it came under the category of " other purposes " these words would have been subsequently omitted.

2. At the cession of the Civil Station of Shillong, owners were not in fact deprived of their land without compensation. The deed of cession runs :—" It is however stipulated should the proprietors of any land within the limits hereinafter described be unwilling to sell or part with their land to the British Government, the said persons shall continue fully to enjoy the same without impost or taxation." The proprietor meant an owner of ri kynti (private land): occupiers of raj land would be proprietors only of their houses. Government paid the price of their land to the owners and the Siem of Mylliem got two thousand rupees for the raj land.

The practice in other cases has been payment of the full price to owners of ri kynti and payment for ri raid (raj land) when it is demanded. In 1883, the ri kynti land in Kench's Trace required for the extension of the Station of Shillong and water supply was taken by Government on perpetual lease from the Sohtun Clan and purchased outright in 1887; the raj land was purchased from the Siem of Mylliem in 1897, but in the deed of sale it was stated that the Siem had no right to compensation, the payment being a special favour as the land was valuable, lying close to the town.

The Chateau land, in ri raid, was leased from the Siem in 1906.

Another instance of full payment is the purchase of the Braemar estate by the Cantonment Authority in 1929. In 1931 for the Rifle Range extension for Cantonments owners of ri kynti were compensated in full; occupiers of ri raid received the value of house, of kper (garden or permanently cultivated land), of permanently cultivated terraced land and of planted trees. On ri raid the occupiers got also the value of land cultivated by them at the usual intervals of three to five years, in other words they got the occupancy value of the land. If ri raid be left uncultivated longer than this period, it is by Khasi custom open to cultivation by anyone, so Government would not pay for such land. The Siem of Mylliem has been willing to give unoccupied raj land free except in the special cases mentioned above. As no Khasi Chiefs have proprietory rights in raj land, which is available for cultivation by their subjects, they suffer in no way by allowing occupation by Government. In Shillong, however, as has been mentioned above, the raj land is valuable, being leased to non-Khasis at annual rentals. Here alone does the occupying of land by Government mean a possible loss to the Siem of Mylliem. The Siem agreed to occupation, without asking for payment, in the case of the Sericultural Farm.

3. It used to be thought that these occupations or leases made the territory British, but it has been decided that not only is a cession of sovereignty rights required, but such a cession is no routine matter capable of rapid and easy accomplishment. The original Civil Station with the original Cantonments is British Territory and Kench's Trace but not later additions.

4. Inspection bungalows and Post Offices have been built on raj land, or possibly on private land, in the States, but consent has been readily given.

5. The above examination shows that from the original cession in 1863 in spite of the power to take free of cost there is no case known of refusal to compensate private owners or occupiers and no instance of land taken in spite of opposition by a Chief. Their consent may be in some measure due to the knowledge that action under clause III is possible for Government.

The clause, as worded, is not in fact used. It may well be amended so as to give to Government the power of acquiring land for all public purposes for which the Land Acquisition Act can be used, but compensation to owners of ri kynti and occupiers of ri raid should

be payable. Compensation to the State Authorities should be payable when State income is actually affected. Whether it should be paid when State income may be potentially affected, i.e., in the future, is a matter of opinion. Such cases would be rare except in certain lands near Shillong. Difficulties are now experienced in the acquisition of land by the Shillong Municipality, by Companies engaged on public undertakings and by Government itself.

6. Roads. The omission of roads from Clause III is surprising; especially as they were mentioned in the agreements of 1856 and so late as the general form of agreement of 1875. The old requirement of assistance in making had become out of date, but power to take land should not have been overlooked. The Khasi idea, derived from the practice in their own States, is that the State Authorities can make a road where they please. Hence no objections or claims for compensation were made when the Government roads were constructed, except by private owners for crops or planted trees. If the land passed over terraced rice land, compensation would be paid.

When the roads passed over ri kynti the owners did not claim for the land, as they were pleased at the prospect of wheeled traffic for their own advantage. In 1892 the Siem of Mylliem handed over to Government 75 feet on both sides of a portion of the Shillong-Gauhati road. Government considered the subject in 1930 and decided that the land occupied in the cases of the existing roads was merely the road itself, but waste roadside lands could be used for metal stacking and buildings for the staff, but in the case of the new main road then under construction, 75 feet was to be taken on either side.

The roads are not British territory; a proposal to apply the Assam Highways Act was recently abandoned by Government owing to opposition by the Chiefs.

It is submitted that change of the Clause to include roads is not absolutely necessary, as the Government of India, if difficulty arose, could issue an order similar to the one for Railways. Insertion may, however, be desirable.

Railways. This insertion in Clause III was made in 1907 owing to the objection of the Sirdars of Mawlong State to a proposed railway. The Government of Assam declared that the Government of India had in 1890 decided that all Feudatory States in India must co-operate with the Imperial Government in the execution of schemes for railways by providing free of charge in their territories

the lands necessary to their construction and maintenance; compensation was to be limited to actual loss sustained by the Chiefs or their subjects. Nevertheless in order to make the position clear to Khasi Chiefs, special insertion in the Sanads was deemed advisable.

CHAPTER XX.

CLAUSE IV OF THE SANADS.

WASTE LAND.

1. Of the recent criticisms of the agreements and Sanads mentioned in Chapter XVI, the first four concern the waste lands mentioned in Clause IV.

The contention is that the Chiefs in 1859 without consulting their Durbars exceeded their powers by giving away waste land and even if they did consult their Durbars, the Durbars deliberately exceeded their powers or else did not understand what they were doing.

As the cultivation except that of terraced rice and garden land is by cropping for 2 years and leaving fallow for 3 or 5 years or even, in the case of poor land, for ten or fifteen years, an area is required many times larger than that under cultivation at any one time. The critics fear that such land may be liable to seizure by Government.

The answer depends upon an examination of what lands were ceded under the term ' waste lands.'

2. In the agreements of 1867 the clause runs:—" Also of all such waste lands, being lands at the time unoccupied by villages, cultivation, plantations, orchards, etc., as may be required to be sold as waste lands." This has been repeated in all subsequent agreements and Sanads with the change that they are such lands as may be required not only to be sold but also to be leased.

To understand the Sanads, it is necessary to go back to the agreements of 1859. These were drafted on the advice of Mr. Allen, Member of the Board of Revenue, Lower Provinces, who enquired into the administration of the Hills in 1858. He recommended that Government take a perpetual lease of lands suitable for such cultivation as tea or coffee. These would be judiciously leased to European and other settlers.

The agreements of 1859 stipulated that this waste land was such that being brought into cultivation would cause no injury to the Khasi people.

In 1860, Mr. Hudson, the Assistant Commissioner in charge of the Hills, drafted a form of agreement on the accession of U Rabun Sing to the Siemship of Khyrim. He proposed a perpetual lease of all tracts of land in his State, that were at the Siem's disposal, on condition that the owners of them were to receive from Government half the rent or revenue realised by leasing them out to speculators and settlers. The Siem objected, proposing that the lands be waste land, situated within defined boundaries, as might not be required by his own subjects, but Government was not to apply for leases of such places as might appear on enquiry to be detrimental to the interests of himself or his people.

This proposal was rejected by Government as it would have given the Siem a general power of refusing to grant any lease which he or his subjects might think proper to refuse.

The conjecture is permissible that for this reason the wording of the agreements of 1867 differs from that of 1859. It seems clear, however, that the agreements of 1859 continue in spirit in so far that waste land is to be leased only if not detrimental generally to the interests of the people and that Government, though it may have the right of decision, is bound to pay attention to this point.

3. The population in the high hills has increased so that to-day there is but little land not cultivated, at longer or shorter intervals, by the people. In the low hills (the Bhoi country) malaria has stopped the increase of population and there is much jungle. Any exercise of the powers under Clause IV would be confined to small areas in the high hills, areas now used by Nepalis for grazing, to some slopes on the southern side of the hills and to the unhealthy low hills, in places where there would be no detriment to jhum cultivation.

The Khasi Durbars would not have intended the agreements to apply to ri kynti, unless abandoned by the owners. They must have contemplated ri raid only. It is true that a Chief and Durbar have no right of ownership in ri raid, they have only a general power of control, but in making these agreements they spoke, it can reasonably be held, on behalf of the people (paitbah) as a whole. The agreements of 1859 were made at a time when there was much waste land and empty country ought, so it could be argued, to be usable

for the benefit of all races in the provinces. But as the country has filled, the Clause has in truth become obsolete for the uplands. Whether there is any reason as regards the low hills for the apprehension of the Khasis set forth is a matter of opinion unsuitable for discussion here. The power has never been used. Apparently the Clause as now worded in the Sanads can come into operation only at the time when Government may wish to sell or lease out a particular piece of land; by the agreements of 1859 all waste lands were given to Government on perpetual lease to be disposed of by Government on sale or lease at any subsequent time.

FOREST TRACTS.

1. In some of the agreements of 1859 after the words ' waste lands (abadi) ' there follows the words ' and jungles.'

In the standard form of agreement of 1867 no mention was made of forests nor is there any mention in subsequent agreements and Sanads. A right of Government to half the profits from elephant-catching was inserted in the agreement form of 1875.

2. It was however supposed that the agreements of 1859 gave to Government a right to half the revenue on forest produce.

The settled practice was that Government officers issued passes for the felling of all timber exported to the plains districts, collected the royalty and paid half of it to the Chiefs. The forests in Jirang were managed by the Forest Department of Kamrup District as a Reserved Forest of the Department. There was no interference with the export of timber from one State to another nor with the cutting of timber by Khasis for their own use or for sale to other Khasis.

The opinion held by the district authorities was that half the revenue was claimable on all felled timber although in practice there was no levy on timber felled for use within the district.

3. In 1902 rules were issued for the Unclassed State Forests in the British portions of the district by Notification 778 R of the 10th March. Natives of the district were to be allowed to cut timber free for their own use but not to export beyond the district except with a trade permit for which a fee was payable. The Deputy Commissioner was told to enforce similar orders for the States.

4. In 1904, the position was examined by Government. Divergent views were expressed whether the subsequent agreements had superseded those of 1859 and whether the term ' waste land ' in

the agreements covered forest tracts. One point discussed was the mention both of waste lands and jungles in some of the agreements of 1859 and the intention that these lands were to be of the special kind recommended by Mr. Allen, namely particular plots suitable for such cultivation as tea or coffee.

The concession had been considered by Government in 1875 to warrant the addition of a clause in the agreement by which Chiefs were required to set aside areas for the growth of trees for use by inhabitants of the State. This is however a separate matter.

5. The result of the examination was the order of Government in letter 120 Forests/3628 of the 6th August, 1904. It decided that the agreements did not warrant the levy of royalty at half rates upon ordinary forest produce extracted for use within the district. It upheld the preservation of the 37 protected forests and the Jirang forests but passes were to be issued by the District Authorities free of charge to inhabitants of the district.

Produce exported from the Khasi Hills to the plains districts was to be liable to royalty but this was to be levied at the Forest Revenue Stations in the plains districts. The rate of royalty was fixed at half that which would be normally levied by the Forest Department; the reduction was made with the intention of allowing Chiefs some profit from the forest tracts in their States.

In point of fact this royalty operates as a half share on profits and on that ground it is open to criticism. The only reply is that Government has power to levy what import tax it pleases in the districts of British India, even although the tax may fall on the exporter rather than the consumer.

6. By Government letter 269 Forests/824-F dated 14-8-1902, it was laid down that no export duty should be imposed on produce of privately owned forests in the States. This was repeated in an order of the Revenue Branch on the 18th October, 1918, on the petition of U Sib Charan Roy and others. But that order laid down that timber exported from British Territory must pay full Government royalty, as Government recognised no such private rights to land in British villages as would entitle the owners to extract timber free of royalty, but that the rules for import duty levied on produce from the States do not apply.

By letter 120 Forests/3628-R dated 6-8-1904 the concession was given, for the present, that there would be no levy of royalty upon produce used within the District.

7. The principal mineral is limestone. The leading case is the Commissioner's Political Appeal Case No. 17 of 1925. A quarry was situated in private land (the Ri seng u Bnai) in Mawlong State. The owners claimed a right to a half share of the Government royalty on the limestone exported. The practice is that royalty is actually levied in Sylhet District and where the stone comes from a Khasi State, half is refunded to the State Authorities. The Deputy Commissioner rejected the claim of the private owners, directing that the half share be paid to the Sirdars of Mawlong, because of the wording of the standard form of agreement of 1867. The Commissioner upheld the decision and Government declined to interfere.

The decision is sound as laying down that Government under the Sanads must deal with the Chief and Durbar, but as a pronouncement, if indeed it be one, that Chiefs, or Chiefs and Durbars have a right to all the profits, it is criticised by Khasis.

The decision can be defended on the ground that all minerals were ceded to the British Government, who agreed to give back half the profits for State purposes.

Certainly if territory became British, at the request of the inhabitants (some of the British villages became British by the wish of the people), the mineral rights would belong wholly to Government by this decision. If private rights were officially recognised during the period of rule of Chiefs, the position in the Khasi Hills would differ from that in the rest of the province, where Government has the sole right to minerals. Any distribution by the Chiefs and Durbars of the States among private owners is, in this view, a matter concerning themselves alone.

In Sohbar, a British village nowadays, the Sirdar takes under the old agreement but used to hand it over to the owners of the land. Recently the owners have decided to give it to the village fund.

In the Shella Confederacy an agreement was made in 1883 between Government and the Wahadadars (reproduced in Aitchison), by which the people of Shella and Nongtrai were to get half the profits of limestone quarries, but as the Nongtrai quarry was on land privately owned, the owners took the half profits and a special agreement of division among the owners is recorded. The

Wahadadars used to hand over the money to the owners of the land, but by a recent agreement, all now goes to the village fund. In Nongstoin the surface rent for the prospecting licence for sillimanite is divided between the Siem and the owners of the land. In Langrin, the Siem takes all, but the land is ri raid.

Ordinary stone was declared to be a mineral by Government in 1931. No objection to the taking of stone by Government or its contractors had been raised until that year in any place save the town of Shillong, where there is an old custom of a charge made by owners of ri kynti to contractors, whether engaged on private or Government work

The fear of losing this source of profit is the reason for recent criticism of the Sanads. Government is unlikely to interfere with the sale of stone for private purposes as the amount involved is small, but whether the custom in Shillong be continued as a matter of grace or not, any claims elsewhere are certain to be disallowed.

CHAPTER XXI.

THE REMAINING CLAUSES OF THE SANADS.

CLAUSES V and VI.—As a Siem is not succeeded by his son but by a member of the Siem clan, to be elected after his death, he is tempted to raise money for present needs by mortgage of State property or by the granting of long leases or perpetual leases at small rentals but on payment by the lessee of a big premium or salami into the Siem's hand. Clause VI was added in 1909.

Government can disallow such transactions under these clauses, but many of them do not come to light.

A long lease of the right of a collection market tolls or other dues does not, apparently, fall within these clauses, unless it can be called alienating. The clauses ought to have been drafted to cover this practice especially when given in return for money advanced. In one case an advance was made for election expenses as a gamble on the result of the election.

The clauses are very necessary. They prevent ri kynti land in the interior falling into the hands of alien money-lenders or the leasing or sale of areas of raj land to any person under clause V and to foreigners under clause VI.

Clause VII.—The absence of timber in the Khasi Hills, due to the wanton destruction of young trees, was noticed by the Chief Commissioner in 1874. He ordered that all Chiefs of the States should preserve such areas as the Deputy Commissioner might consider sufficient for the growth of trees.

In consequence, reserves were made, mostly by Colonel Bivar, and exist to the present day. They are in number 36 and are called Law Sirkari (Government forests). Control is by the Chief of the State under the supervision of the Deputy Commissioner. The aim of the Chief Commissioner in 1874 was the creation of a forest in every village, but the actual preservations have been only of some large areas. Such small village forests as exist are managed by villagers themselves, though the Chief and his Durbar have a general duty to see that there is no misuse.

The Law Kyntang are sacred groves and are not controlled by Government.

Clause VIII—has been dealt with in chapter X; it occurs only in the Sanads of Chiefs who have consented to the trial by the Deputy Commissioner of divorce suits.

Clause IX—gives power to remove any Chief if he acts improperly or if his subjects have just cause for dissatisfaction.

CHAPTER XXII.

FEDERATION.

1. The 25 Khasi States contain 180,000 people, of whom 158,000 are Khasis. There are about 75,000 Khasis in Mylliem and Khyrim and about 45,000 in Cherra, Nongkhlaw, Nongstoin and Maharam. None of the remaining States have 4000 inhabitants, four have under five hundred. They are too small to organise public services similar to those of modern States. Maintenance of village paths by forced labour, employment of watchers for fruit groves, cleansing of markets, these with judicial and occasional religious functions comprise the total activities of the State authorities. The Missions, helped by Provincial Government grants and voluntary contributions of the villagers, provide education; Government bears the expense of the dispensaries, two States alone making a contribution; Government maintains certain village paths either wholly or

partly and bears the entire charge of the four motor roads, though Khasis pay their share in the form of taxation of vehicles using these roads. The Police and Criminal Courts for serious offences are provided by the Provincial Government.

The Khasi people have not expected from their rulers the public services demanded nowadays by inhabitants of British India. They pay no fixed tax save market tolls. A house tax in theory can be levied only by consent of the people for special purposes, but in some States it has become a fixed tax paid every year. The people give to their rulers no power of taking revenue from land. The exceptions to this rule, such as revenue from forests and professional graziers have arisen since the advent of the British Government and are not regarded favourably by many, who consider the income should go to the villages, not to the State Durbar. The revenue from liquor stills is of recent origin. Certain pieces of land, such as Ri-bam-Siem (land for food of the Siem) may be set apart for the Chief. In the War villages, the small revenue, which may include a tax for wages of watchers of groves, is allotted by rules, sanctioned by the people in Durbar, made in a business-like way.

The theory is that special taxation must be imposed only with consent of the Durbar and for a special object and revenue not marked for a special object is for the upkeep of the Siem's family and the State officials and establishment and State expenses. The Siem's family means the Kurs of the Siem, not his wife and children. Any money taken by him for the maintenance of his wife and children should be with the knowledge and consent of his Kurs. Hence the Siem families, that is the Siem Kyntheis or " female Siems," look upon the revenue of the State not car-marked for special purposes, as income for the Royal family. No separation of the public and private purse has been made except in cases of special taxes raised for particular purposes. Taxation is very small and save in Mylliem and Khyrim, nothing remains for public work after furnishing the very meagre maintenance of the Chiefs and their families and of the few officials.

The result of the absence of public services, especially of State police, has been the dependence of the Chiefs upon the Deputy Commissioner. By their Sanads, their authority was made largely to depend upon Government: but to such an extent has their power been weakened, by no conscious acts, be it said, of the Deputy Commissioners, that it is rare to find a Chief enforcing an order or

fine. Disobedience by a subject is reported to the Deputy Commissioner with a request for his action. All rule rests ultimately on force and if that force be found elsewhere than among the Chiefs, their rule is not a reality. Discussion whether the Chiefs have been supported too much or too little in the past is unnecessary. It can at least be said that criticism by many Khasis would be on the ground of too much support.

Elections, whether of Siems or Sirdars, are the curse of the States. The Siem must come from a certain family but the particular man is chosen by election. Elective monarchy has much to recommend it on theoretical grounds but it has been shown to be impracticable in Europe by the experience of imperial Rome, mediaeval Germany and modern Poland. It is no more satisfactory in the Khasi States.

The electoral system varies in the States. A brief account is given at pages 75 sqq of Gurdon's Khasis; a complete record was made by Colonel Herbert, Deputy Commissioner. Corruption is rampant and the Chief takes office burdened by debts, to pay off which he uses the State income.

The system has the merit of allowing much control over their own affairs but with supervision. It has been said that the best treatment of a people in a simple stage of civilisation is to leave them alone. The present system has that advantage but there are dangers to its continuance, dangers which unfortunately are not appreciated by the Chiefs.

2. The principal danger is from the people themselves. The progress of education, the new ideas due to the wide spread of Christianity, the contact with the life of the provincial capital in their midst have greatly changed many of the people. A numerous class of persons possessing higher education has come into existence. The Chiefs and some of their Myntris are literate, but taken as a whole, the Durbars of Myntris are uneducated. In comparison with the changes in certain classes of the people, the Durbars have stood still. No part of the progress of the last fifty years can be credited to them. The educated people tend more and more to turn their backs upon the Durbars, to seek the Government Courts and to interest themselves in the politics of the Provincial Council. A hostile or dissatisfied educated class is a danger to the States.

In the villages, a little education, working on the independent spirit of the race, has caused less respect for the decisions of the

Durbars. There is an apparent desire to reduce the Chiefs and their Durbars to the same position, as regards judicial powers, as that of the Dolois in the British Jaintia Hills, where the Doloi hears all Civil cases, but if an appeal be made, the Subdivisional Officer hears it denovo, the parties engaging legal aid if they wish. A large and increasing bar is ready to take up this field whenever it may be opened to it. Even now, petitions, motions and replies on matters that come to the Court of the Deputy Commissioner from the Durbars of the States are drafted by lawyers. The point is noteworthy as showing the trend of men's minds

The decision that the British portions of the hills ought to enter Council Government was taken by Khasi leaders with the knowledge that the nation would thereby travel on two roads, likely to diverge ever more widely from one another They decided that this could not be avoided. At present the position of the Sirdars of British villages differs very little in practice from that of Sirdars of the small States or even from small Siems and Lyngdohs, whatever the differences in theory, but under the new constitution these differences will be wider.

Whether the new ideas will have an effect on the people of the States is unknown In the past, the villages in the British portions became British through discontent with their rulers. The recent request of a large number of the people in the southern part of Khyrim to become British territory is ominous. The main safeguard of the States is that their system is democratic but there will in future be a democratic and possibly alluring system of Council Government working alongside it.

3. As for the external dangers, the one nowadays present to the minds of the Chiefs is encroachment on their powers by Government. For this reason they will not give their consent to the introduction of Acts. A previous chapter has been devoted to show that Government has ample powers but has not used them in the past to the detriment of the States. There seems no likelihood that the Government of India or its representative in Assam will use them to harm the States in future. Of all dangers to be apprehended, that from the Government of India is the least.

The complex question of the relations with the Provincial Government under the new constitution is unsuitable for discussion here. The province at present pays towards education, medical relief, and for work of the agricultural department in the States. If

the Provincial Government is to continue to pay, the Chiefs cannot afford to quarrel with it. furthermore, higher education and Government posts are at present open to subjects of States equally with British Indian Subjects. The danger point is the town of Shillong, the position in which has been treated in a previous chapter. The area originally taken was too small and a very difficult situation has arisen. If the Provincial Government were to find itself thwarted in its administration of Shillong, it might become exasperated with the Siem of Mylliem and regard all Siems with disfavour. Whether a conflict would cause the Khasis to rally to the support of their Siems cannot be predicted.

4. How best to meet these dangers must now be considered. Without educated Myntris no scheme can be successful. At present certain clans, ki trai hima, the original inhabitants of the State, have alone the right to elect Myntris. Some clans now consist of very few households. The men chosen by them have little or no education. Most of the educated men are Christians, and save in some places, Christian Myntris can be elected. In all States, except in the War country, the educated men are either not chosen by their clans or they are not members of a clan which has a right to elect or they do not seek election.

For example, in the town of Shillong within Mylliem State many well educated and capable men reside. None of them have a place in the Durbar of Myntris. There is a special reason as most are from other States and have not chosen to be subjects of the Siem. Some would be willing if they were allowed to have a Raid Durbar for their local affairs. Both in the town and in the interior, the educated men do nothing to support the Siems and anticipate a growing opposition within the States to their rule.

Yet the presence of such men in the Durbars is an absolute necessity if the States are to survive.

The rights of the clans are so deeply fixed in the minds of the people that a change to a Durbar elected by all the people is not possible. This does not apply to War villages where Sirdars and Headmen are elected by all the people.

Enlargement of the Durbars to include men of ability, the Myntris elected by the present methods being retained, seems the only feasible plan. They must either be chosen by electoral divisions, such as raids (a method which may not secure men of education) or the Political Officer must prepare a panel of such

men for each State. The Durbars would then choose from this panel a number sufficient to fill the allotted places.

They would not sit for life but for a fixed number of years. They would have a right to give decisions in the same way as existing Myntris.

The second method would secure suitable men and would produce an immediate effect. Some other way of choosing might be devised in times to come. The Siems would not favour the idea as they might have difficulty in controlling these men, for among them some might spend their time in making trouble. But unless such men are used in the service of the States, the Siems will find more and more difficulty in maintaining their position

Whether the changes are altogether in the way of progress and advance and are wholly beneficial to the people or whether they are too rapid is beside the point. The change in ideas exists already and is not likely to grow less in future

5. Federation may now be considered. The first step should be the re-joining of the States of Mylliem and Khyrim under a single Siem. There were one State until the middle of the nineteenth century when the rivalry of the two branches of the Siem family caused the division. There is a precedent in Maharam State, where the rival white Siem and black Siem families divided their spheres of influence but the State was re-united with agreement that the Siem of the single State be chosen from either of the families according to votes of the electors.

6. Adjoining Mylliem are three Lyngdoh-ships containing between them 6500 people. They could join the Mylliem-Kyrim State; the Lyngdohs would demand a semi-independent status, indeed they would doubtless ask for a position nearly independent.

There is a precedent in the four Sirdars of the Saw Raid in Khyrim State, although the Lyngdohs would demand still greater freedom than the four Sirdars. The result would be rather a federation than unified state. Appeals would go to the Mylliem-Khyrim Durbar and the Lyngdohs would have a seat on that Durbar.

The danger would be a stream of petitions against the Lyngdohs from malcontents in their territories, demanding that the Lyngdoh be placed on trial for misconduct or that he be prevented from exercising executive power in a particular matter. The example of the Saw Raid in Khyrim is not a happy one as violent disputes

between Siem and Sirdars occur at intervals and recently three of the Sirdars have made a request to sever all connection with Khyrim. The Khasi people tend to divide rather than to unite, so so greatly do they cherish individual independence. The Lyngdohs would doubtless stipulate that cases against them personally would be heard by the Political Officer. Definition of powers could be made in the written instrument of federation or unification.

That difficulties and troubles would occur is certain, but if the people of these States desire unity and consider that their patriotic duty lies in working together rather than in supporting the Siem of Mylliem-Khyrim or the Lyngdohs in disputes, the scheme will be workable. Educated and able men on the Durbars would be an essential condition of success. On the other hand, if the people persist in banding together for inter-state disputes, the plan will fail and with its failure all hope of a larger federation will disappear. The failure will not be such an important matter as the collapse of an ambitious scheme for federation of all the States. It seems that the joining of Mylliem and Khyrim and the inclusion of these small States is a practicable scheme on which Khasi leaders might concentrate for the present.

As for the Sirdarships, those of Pamsan-ngut with 289 and Nonglywai with 298 people ought to be included.

7. The War Sirdarships of Mawdon and Dwara-Nongtyrmen each contain about 500 people. They could join the Shella confederacy but between them and Shella is the State of Mawlong with 2300 people and three joint Sirdars. Rivalry between Mawlong and Shella may stand in the way of uniting, though since the decision in recent years that Wahadadars of Shella may be chosen from candidates outside of Shella village, an important obstacle has been removed. The affairs of the Shella confederacy do not run smoothly; appeals and disputes of all kinds come in continual succession to the Deputy Commissioner and deadlocks in administration have to be removed by his intervention. Villages have broken away and become British in the past. Nevertheless it is a live though often too lively political association.

8. The remaining States can be placed in the following groups.

(1) Maharam, Mawsynram, Malaisohmat, Bhowal.

(2) Nongkhlaw, Nongspung, Mariaw, Rambrai, Mawiang, Jirang.

(3) Nongstoin, Langrin, Nobosohphoh.

Members of these groups might unite together to form only three States. The last surviving of the Siems of each group might rule the whole State. His successor might be elected from any of the Siem families who at present supply Siems to the group.

The three States, resulting from the above combinations, could federate with Mylliem-Khyrim and the War confederacy. Cherra does not fall into any group.

Myntris of the present Durbars would continue in the Durbars of the States so formed.

In this way a confederacy consisting of only six States could be formed.

Opposition of the Siems and Siem families must be expected: the reduction in the number of States must be effected by pressure of the people.

Amalgamation of these three groups of States to form three States is not in any way essential for federation.

9. His Excellency the Viceroy recently advised federation and in consequence the Chiefs have met together and have passed the following resolutions:—

I The Federated Khasi States.

We, the Chiefs of the Khasi States, the Siems, Lyngdohs, Wahadadars and Sirdars, on behalf of the Khasi States whom we represent have now associated and made a federation of these states:—Khyrim, Mylliem, Nongkhlaw, Cherra, Nongstoin, Nongspung, Maharam, Mawiang, Mariam, Mawsynram, Langrin, Rambrai, Nobosohphoh, Malaisohmat, Bhowal, Sohiong, Lyniong, Mawphlang, Jirang, Mawlong, Shella, Mawdon, Nonglwai, Pamsangut, and Dwaranongtyrmen, which will be called the Federated Khasi States.

II. The aim and object of this federation is to form a body politic.

(1) To discuss and consider political questions and matters of common concern and interest and to take united action in such matters, whenever it becomes so necessary for submitting their views, opinions and claims before the consideration of the British Government.

(2) To represent their legitimate desire to take a share in the control of matters of common concern to the Khasi states and in the control of matters common to India as a whole, which is shared with some popular element in the Government.

(3) To move the British Government that in connection with the general dealings of the Government with the Native States in India and in the classification of their rank and status, the position of the Khasi States, which are in subsidiary alliance with the British Government should be taken into account.

(4) To put forward their claims for a higher status and greater judicial power, in view of their progress, advancement and the changing condition of time.

(5) To make a closer association, a more friendly relation and peace among the federated states and to take a growing interest in economic concerns and in many matters common to the country to which they belong for the welfare, progress and advancement of the people and good government of their states.

(6) To settle any dispute that should arise between one state and another by the chiefs chosen from among themselves.

(7) To show on all occasions their allegiance and loyalty to the British Crown and their obligations for the protection and respect of their customs, right and privileges.

III. That ordinarily the federated states should meet twice a year in a Durbar at an appointed place to discuss and deliberate on matters of common interest.

IV. That this assaciation resolved that a copy of this instrument federating the Khasi States be sent through the Deputy Commissioner of the Khasi and Jaintia Hills to His Excellency the Governor of Assam for approval and recognition of this federation and to recognise the Federated Khasi states as an unit among the other Indian States in the Federal Constitution.

10. The desire to secure representation in the Federal legislature of India is natural and may be of benefit for their protection. The expressed determination to work together is a welcome change from the mutual attitude of the past, when no Chief has been a friend of his neighbour, owing to the incessant boundary disputes. The decision to meet together twice yearly will make it possible for the Political officer, who should have the right of attending meetings of the Durbar when he desires to lay matters before it, to consult the Chiefs on many matters of policy. It is not of course

a federation. A Chief cannot act without his Durbar and what he says alone cannot bind his State, any business of importance brought up at a meeting would have to be deferred for final decision to the next meeting after they had consulted their Durbars. Even after this, nothing, unless it was a Government order, would bind a particular State which refused to agree to a proposal. But apart from its value to a Political Officer such a Durbar will be necessary in future for consideration of many problems.

If the Provincial Government be no longer prepared to finance education and medical relief, a Durbar of the States is a proper body to consider the position, to send each Chief to his own State to consult his Durbar and then to meet to decide what is to be done

In one point of federal organisation the Chiefs should act together. Their lack of power comes largely from having no prison and no police to enforce their orders. A federal prison, properly conducted, is required and a small federal police force who will execute warrants issued by a Chief within the borders of his own State and will also execute attachments of property. For the conduct of this public service, an executive officer of the Durbar of the States will be required. This service would be a true federal institution.

Little or nothing more can be expected at present. As the Durbar will have no power to bind any State, its composition is not of present importance, although if it be composed of Chiefs it will present their ideas more than those of their people.

The necessity of appointing educated Myntris has been explained above. Every Chief should be accompanied to the Federal Durbar by one Myntri and be the most able and educated man of his State Durbar. These men will be able to understand the problems which will arise at the meetings, problems which are likely to be of much complexity.

11. About the confederacy which may result, little should be said for the reason that plans for the constitution of a federal Durbar with powers and officials for public services have, after being drawn up, been rejected by Khasis to whom shown, as too advanced to be workable. The obstacle is lack of harmony among the Chiefs, none of whom has up to the present shown himself willing to part with power to a federal authority.

Advantage can be taken of the willingness of the Chiefs to form a Council to create a federal fund and an executive officer and federal

service with the limited object set forth above. A body will then be in existence which can deal with the questions, medical and educational, which are bound to arise between the States and Government as it will be constituted in the near future. If the resolution of the Chiefs to form a body politic means that a federal constitution will be made, their proposals will be awaited with interest.

It is better for any adviser to refrain from putting forward a scheme, however simple it may be, which will deter the Chiefs from proceeding further along the path on which their resolution may be a first step. Any scheme must reveal the fact that federation means surrender of power to a central authority. The recognition of this should come from the Chiefs and their people themselves.

APPENDIX A.

vide CHAPTER III.

Note by Mr. JOSINGH RYNJAH, Sub-divisional Officer, Jowai, on right to property when a married couple have no children.

I. When the husband has had entirely separate earnings;
II. When husband and wife have earned jointly and bought land and accumulated cash.

I would preface my note with the following remarks:—

In order to come to a proper understanding of the issues involved in these questions, it is necessary to get first a clear understanding of the legal position or civil right and status of a Khasi man in a Khasi family. To my mind, without this essential foundation all the loose talk about a Khasi man's legal right, or lack of it, may only be mere assumption not based upon sound theory or valid custom. There are some Khasis who because of their inability or unwillingness to take the trouble of thinking things out, take the facile course of making an incorrect proposition and a loose general statement that a Khasi man can have no property at all, either before or after marriage. They believe in a simple formula which will save them the trouble of tracing out things to their roots to find the underlying principles of Khasi customs and Khasi way of life. But

life, even among Khasis, is, I think, not so simple as to always yield to such simple treatment. The hard facts of life, however inconvenient they may be, have got to be faced. And, in a matter like this, it is little use formulating any set of principles or rules which do not, and cannot, fit in with the real facts of the people's life. It can easily be shown that the simple proposition like the above loose statement that a Khasi man can have no right of property either before or after marriage is really at variance with true facts. That he is not merely a slave like that in ancient Roman Law, incapable of having any right of property, stands manifest as the following Khasi maxims and phrases, pregnant with meaning, are taken into consideration together with the observed facts of Khasi family life Firstly, " u kpa uba lah uba iai; u kni uba tang ka ka iap ka im." The expression " u kpa uba lah uba iai " denotes that a father in a Khasi family is its real responsible head.

In his monograph Colonel Gurdon speaks of him as the executive head of the family, his wife calling him lord (or kynrad).

But by whatever appellation we may style him, he is in fact the legal executive head of the family, vested with authority over the management and control of its *separate property* on behalf of the family. I have advisedly used the phrase *separate property* as that over which he can have legal authority; since in religious matters and other things in which other kurs or families are also interested u kni of the family will have a big say, seeing that they concern and affect not only the father's family or children but others also in the same clan.

Secondly. It is a very common thing among Khasis to ask a man who follows a profession or carries on trade or business in any place outside that in which his wife and children or parents live, whether he earns for his kurs or his children (lada u kamai iing kur ne u kamai iing khun). Even after a man has been married and gone to live with his wife in her house a Khasi man may and does go to earn for his parents or kurs, if and when they happen to be in straitened circumstances. The wife cannot lay claim to such earnings in his kur's family and for this fact there can be no other ground or principle than this, that a man can have self-acquired property and make a gift of it to any one he likes in his life time.

Thirdly. We have in Khasi Nongtymmen (ancestral property) and Nongkhynraw (self-acquired property). A man may hold one or both of them. I think the fact that we have these two distinct terms to contrast one kind of property with the other kind of it connotes that a Khasi man is not really incapable of having rights of property, as some glibly say. This and the other facts set forth above clearly indicate that it is a misconceived notion to think that

a man in a Khasi family is nothing but an earning slave or machine. It is, I think, only by shutting one's eyes to facts that one can entertain such an absurd idea which is opposed to natural justice and the exigencies of civilised life everywhere.

Fourthly. All legal authorities and jurists are, I think, at one in this, that a custom which is opposed to public policy or public morality cannot be enforced as valid in law. Thus on public grounds also it is an obviously untenable position to hold that a Khasi man is a nonentity with whom no one can deal in matters either of trade or law, etc. Were such the case true civilised life among Khasis would be at a standstill. Indeed, a state of affairs will in such circumstances be brought about which will spell chaos. Society itself would not be able to hold together for long with such absurd, impractical and incomprehensible theories at work. To my thinking, however, the facts of Khasi life and Khasi outlook, as indicated in the previous paragraphs, clearly point to the inescapable conclusion that a Khasi man can have and hold property, either solely his own or jointly with others.

This being the position, I proceed to give my answers to the two questions I and II above.

I. If the married Khasi couple have no children and the husband has entirely separate property earned by himself alone, either with or without his kurs' help and funds, his childless wife or widow will not be able to claim the whole of his separate earnings separately kept. I hold however that a man can, in his life time, make a gift of the whole or part of his self-acquired property in which his kurs have no claim, either to his wife or to somebody else. Of course, the wife is entitled to reasonable maintenance out of any property left by her husband. It may be observed also, that among orthodox Khasis a husband does not go to live with his wife until a child is born. So among them a question like the one discussed here is very rare.

II. If the childless couple have earned jointly, bought land and accumulated cash, i.e., if the property jointly earned is large, on the husband's death, the widow will not be able to claim the whole of it. The deceased husband's kurs who have religious obligations to meet in connection with the man's obsequial rites and ceremonies for the welfare of his soul, will lay claim to at least half of it. And they are entitled to do so; for, underlying all Khasi law of inheritance is the naturally just principle that rights carry with them obligations; and that conversely, obligations postulate the existence of rights. This is their fundamental concept of justice and it is justice which is self-evident and fair. When the husband and the

wife have taken their shares, their respective kurs will succeed to the property of each separately.

According to Khasi ideas the connection between the childless wife and her husband is but ephemeral, or at all events during his life time only. After their death their bones are taken by their respective clans to their different family cairns; or, if the wife survives the husband, she may go to another man and have a new family in which the former husband and his kurs can have no place or concern whatever, temporal or spiritual As a matter of fact, according to Khasi custom a married couple should separate, if after living together for some years there is no issue of the marriage. For Khasis look upon such a marriage as one not sanctioned by Providence, and it should therefore be dissolved. After dissolution the parties as well as their families will not consider themselves as in any way bound to each other; whereas, if there are children, the bond between them will forever remain, and it will never be taken as if it had been severed altogether by the death of the husband or the wife. The purpose of Khasi marriage is the procreation of children. The house of a married couple having no children is in a real Khasi sense not a completely formed family at all; for in such a case everything of that house will go back to the parent stock or family from which it is an offshoot, or to those entitled to it, directly the wife dies and the house becomes exinct. As has been observed, to an orthodox Khasi mind the purpose of marriage is the procreation of children, in whom a man is, as it were, taken to be born again. On the birth of a child a " mihpli " or a " mihbteng " comes into being. So the parent may die but in its child it becomes reproduced and it, as it were, lives. This is why children as representatives of their parents succeed to all their property to the exclusion of all others, and the existence of the family continues. This therefore is, I think, a significant fact necessary to be borne in mind in considering questions of inheritance to a man's or a woman's estate. It is also necessary to keep in mind that Khasis believe in life after death and that their dead always demand that their rights be given them by those liable to do so according to Khasi religion. Such demands of their dead cannot be ignored by their living kurs who are able to satisfy them. If they ignore them, they do so at their own peril even in this life. This explains the reason why good orthodox Khasis would spend their all, nay, more than their all, in getting the bones or ashes of their dead removed from their temporary repository and deposited again in their permanent family cairns, after observing the necessary ceremonies and performing the necessary pujas connected with such an occasion.

APPENDIX B.

AGREEMENT executed by the CHIEFS of the MINOR STATES of the KHASI HILLS, 1859.

To C. K. HODSON, Esq., Principal Assistant Commissioner, Khasi Hills, (on behalf of Government).

We, Sundar Sing, son of Naluk Khasia, of Maudan punji; U Jo Sirdar, son of Bna Khasia, of the same place; Birsai Khasia, son of Iangthoma Khasia, of Sinai punji; Namsing Khasia, son of Amar Sing, and U Wansit Khasia, son of Suba Khasia, of Tangar punji, elaka Maudan, Khasi Hills, do execute this agreement, to the effect that, as desired by the British Government, we hereby lease to them, of our own accord in perpetuity, all uncultivated waste lands and forest tracts that lie within the limits of our respective elakas of Maudan punji, Sinai punji and Tangar punji, that being brought under cultivation, will cause no injury to the people of this elaka, and also all such places where minerals exist, and may hereafter be discovered, with the exception of the lime-quarries covered by the lease previously executed by us. We further agree that we, our heirs, and assigns shall have no objection to Government utilising the land hereby leased by reclaiming them, leasing them out to other persons and settling tenants on them, as they please, to accrue profits. That all enquiries relating to the lands shall be made by Government, and we shall have no power to lay hand on the matter. That we, our heirs, assigns, or the persons who will hereafter be the owners of this elaka, shall always get half the profits arising out of the lands hereby leased. That should there be no profits, no claim from us for our half-share will be acceptable. That without your permission we shall have no power to lease or tranfer any land to any Bengali or European. Should we do to the contrary such lease or transfer will not be valid. As for the execution of this agreement, we held darbars in our punjis, in which the people gave their consent to its execution. That we shall have no objection to Government making settlement of the lime-quarries that had been previously leased to Mr H. Inglis, and which are now in the Government possession, according to the terms of the lease executed by me, Sundar Sing and others. To the above effect we execute this agreement this 27th August 1859 corresponding to the 12th Bhadra 1266 B.S.

Witnesses:—
U Iang Laloo, Sardar of Jowai punji.
,, Miri Roy, Acting Interpreter.
,, Solomon, Interpreter.

Acknowledged before me this day in open court, and presented in person by Sundar Sing Sardar, U Jo Sardar, Birsai Khasia, Nam Sing, and Oo Ahnseet Khasia.

(Sd.) C. K. HODSON,
Principal Assistant Commissioner.

APPENDIX C.

Glossary of terms commonly used.
Complete explanations of many are to be found in Colonel Gurdon's "The Khasis."

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ai wai	to lease.
baiwai	rent.
beh khih	Chapter VI
bri	grove of fruit or nut trees.
buh bynda	to mortgage
buniaj	private land similar to Ri kynti, a Jaintia Hills word. (Chapter XII)
hali	wet rice-field, a Jaintia Hills word. (Chap. XII).
hok	right, right to property
iapduh	extinct, said of a family or branch of a family (Chap. XIII, 2).
ka iawbei	female ancestress of a family or clan.
ing, iing	house.
ing (iing) khadduh	house of the youngest female. (Chapters I and XI).
jaid	clan.
ka kamai	earnings. (Chap. VII, Mawlong section).
kha	relative connected through males.
ka khadduh, ka khun khadduh	the youngest daughter. (Chap. IV).
khang apot	Chapter VII.
kit apot	Chapter VII.
kit khih	Chapter VI.
khundir khunti	Chapter VII.
ka kiaw	female ancestress, grandmother.
ka kmie	mother.
u kni	maternal uncle.
u kpa	father.
kper	garden land, permanently cultivated, and manured; land for crops other than wet rice.
kpoh	lit. womb, hence stock of descent.
kur	blood relative connected through females.
law adong, law kyntang, law lyngdoh	from khlaw, forest—forests reserved for varying special purposes. (Chap XIII, 6).
law sirkari	Chapter XXI.
maw	stone.
mawbah	big stone, clan or family burial stone. (Chap. XI, 15).
mawbri	boundary stones. (Chap. XIII, 8).
mawniam	same as mawbah.

myntri - - - - - - -	an elected member of the Durbar of a Chief. (Chap. XXII).
niam - - - - - - - -	religion. (Chap. XI, 9).
nongiohpateng - - -	ancestral property—ioh pateng, to inherit.
nongkhynraw - - - -	lit. batchelor's earnings, self-acquired property. (Chap. III).
nongtymmen - - - -	ancestral property. (Tymmen—ancestor).
pynthor - - - - -	wet rice-field, a Khasi word, same as the Synteng hali.
rap-iing - - - - - -	Chapter III.
ri - - - - - - - -	land.
ri iapduh - - - - -	Chapter XIII, 6.
ri kynti - - - - - -	land held in absolute private ownership. (Chap XIII, 3).
ri raid - - - - - -	public land, raj land. (Chap. XIII, 3 and 6, B).
ri seng - - - - - -	a War term, land held by a family. (Chap. XIII, 7; and Chap. VII).
ri tymmen - - - - -	ancestral land. (Chap. XIII, 6).
ri seng - - - - - -	Seng land. (Chap. VII; Chap. XIII, 7).
ri - - - - - - - - -	to keep.
ri shieng - - - - - -	to keep the bones, to place the bones beneath the family stone.
ri shieng land - - - -	commonly called ri shieng, is land held for the purpose of meeting expenses for the keeping of the bones. (Chapter VII).
sang - - - - - - - -	sacrilege, taboo. (Chapter XI, 14).
seng - - - - - - - -	a War term, family. (Chapter VII, Chapter XIII, 7).